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Digest,

AND
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INCLUSIVE.

———"Quod magis ad nos
Pertinet, et nescire malum est, agitamus."

HORAT.

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THE Notes given in our *Postscript*, to save space, are not repeated in the body of the work when such notes are of a temporary nature; but when desirable to be preserved they are included from time to time in the work, or added, as now, at the end of the volume.

TRANSMISSION OF LETTERS ON SUNDAYS.

A memorial to the Lords of the Treasury has been signed by many eminent solicitors against the proposed alteration at the Post-office for transmitting letters on Sundays. The memorial contains the following statements:—

"That while your memorialists hail with satisfaction the desire expressed by the Postmaster-General in his recent circular to afford postmasters and their assistants proper rest on the Sunday, they cannot but lament that it is connected with a scheme which will render it necessary to open the General Post-office in London, on the Lord's day, for the purpose of receiving, sorting, and transmitting foreign and provincial letters.

"That in January, 1839, when a measure of a similar nature was in contemplation, a memorial, signed by upwards of one thousand six hundred firms of solicitors and individual legal practitioners, was presented to your Lordships, deprecating the then proposed alteration on the ground that it would ultimately lead to the opening of the Post-Office on that day for all purposes, and that any such innovation, by throwing a professional responsibility on your memorialists on that day, would be the means of rendering the due observance of it by them, their clerks and dependants, most difficult, and of depriving them of the rest to which they were entitled on that day.

"That her Majesty's Government having on the occasion referred to, in deference to the public opinion then expressed, abandoned the then proposed measure, and your memorialists having experienced the benefit of that decision, humbly and earnestly pray your Lordships that the cessation of business which has hitherto existed in the London Post-Office on the Sabbath may continue to be observed."

We have seen the signatures to this memorial, and find they include almost all the well-known firms and individuals of the largest practice. The memorial will, no doubt, receive the careful attention of the Government, for the profession is peculiarly competent to judge of the probable effect of the contemplated measure on the most important branches of public business.

EXAMINATION OF ARTICLED CLERKS.

A candidate asks "whether the *Questions in Bankruptcy* will be confined to the law as laid down by the 'Bankruptcy Consolidation Act, 1849,' or will embrace the former statutes, for as the times of procedure, &c., are materially altered, should the latter plan be adopted it will add considerably to the difficulty in preparing for examination."

We think the *Questions* will be founded on the Law as altered by the New Act, but our Correspondent is aware that the larger part of the law remains unaltered, as will be seen by our *Analysis and Notes on the Act*, at pp. 297, 318. Whether questions will be put on the new clauses, we of course cannot predict; but we recommend the candidates to peruse the alterations, as well as that part of the Statute which merely consolidates and re-enacts the former law.

LECTURES AT THE INCORPORATED LAW SOCIETY.

Mr. *Jebb* has been appointed to deliver another Course of Lectures on Equity and Bankruptcy, and Mr. *Maynard* on Common Law and Criminal Law.

Mr. *Fielding Nalder* having concluded his Course of Lectures on Conveyancing, Mr. *E. K. Karlake* has been appointed to that office.

The invitation to Lecture at the Society has usually extended from year to year for three years; but we understand that in future it will not be expected that each Lecturer should continue beyond two years.

THE LAW SOCIETY LIBRARY.

"An Attorney's Clerk" is informed that the Council of the Incorporated Law Society have no power "to allow clerks in attorneys' offices in London, on giving satisfactory references, paying an introductory fee and an annual subscription, and signing rules, to read, but not take away, the books of the library in the Law Institution." Such admissions are confined by the charter to the articulated clerks of members and why should they not? The land, the buildings, the library itself, have been purchased by the members: what claim can strangers have to the use of them? If every attorney and solicitor belonged to the Institution, a small annual subscription would be sufficient, and additional rooms might be appropriated for the use of clerks. About seventy thousand pounds have been laid out by comparatively a small part of the profession. The former admission fee of 25*l.* has been reduced to 15*l.* for town members and 10*l.* for country, and the annual subscription is now only 2*l.* for the former, 1*l.* the latter. This shows a sufficiently liberal spirit which ought to be met by the profession in general.

STATUS OF ATTORNEYS.

We recollect that ten or fifteen years ago, several of the public journals were accustomed to consider that individual delinquents were but samples of the whole body. Such is not now the opinion; the press in general treats the profession with due respect, and justly denounce instances of malpractice.

RIGHT OF WAY.

In answer to the question of "Civis," p. 312, *ante*, J. S. states, that from the following pas-

sage in the 2nd vol. of Selwyn's *Nisi Prius*, p. 1345, note (u), 11th edition, it would appear that B. cannot, of right, insist on having an entrance into the road formed by A., upon his own land, and use it as a highway. "Where the plaintiff made a street leading out of a highway, across his own close, and terminating at the edge of the defendant's adjoining close, which was separated from the end of the street for 21 years, (during 10 of which the houses were completed, and the street publicly watched, cleansed, and lighted, and both footways, and half the horseway thereof, paved at the expense of the inhabitants,) by the defendant's fence; it was holden, that this street was not so dedicated to the public, that the defendant pulling down his fence might enter it at the end adjoining to his land, and use it as a highway." *Woodyer v. Hadden*, 5 Taunt. 125. (See *R. v. Barr*, 4 Campb. 16. See also *Wood v. Veal*, 5 B. & A. 454, and *Jarvis v. Dean*, 3 Bing. 447. The inquiry made by "*Civis*" is, whether "an entrance" can be made into the road in question, which entrance might be merely for a foot-way; but the principle seems the same, and would extend even to the right of having a foot-way.

DUBLIN LAW CLERKS' BENEFIT SOCIETY.

We are glad to learn from our able Contemporary in Ireland, "*The Press*," that the Law Clerks of Dublin are founding a Society like "*The United Law Clerks' Society*" of London, which has been so successful and so eminently useful. The following is extracted from "*The Press*" of the 19th October:—

"The want of such an institution in Ireland, more particularly in these days of sickness, po-

verty, and death, has been severely felt by the Dublin law clerks. A few solicitors have for some time been endeavouring to stimulate the formation of a friendly society of law clerks, similar to those of London and Manchester, for the purpose of providing for cases of sickness, death, and other casualties, and framing a plan for mutual assistance, social and mental advancement.

"With this object in view, a meeting took place at Radley's Hotel, Samuel Gerrard, Esq., chairman; Theodore Cronhelm, Esq., honorary secretary. There was a large and respectable attendance of law clerks. Daniel Molloy, Esq., submitted for examination the draft of a set of rules similar to those in use in London and Manchester, the leading principles of which were agreed to. A committee of law clerks was appointed to report upon the rules preparatory to a general meeting. Apologies for non-attendance were received from Messrs. Richard Meade and Wellesley Pole Fletcher. A most encouraging letter was read from the secretary of the London society. A vote of thanks was unanimously passed to Messrs. Gerrard, Molloy, Cronhelm, and those other gentlemen of the legal profession who had manifested so strong an interest in behalf of the Dublin law clerks and their families.

"It is to be hoped the advantages sought to be obtained by the establishment of this society will be fully realised; but much depends on the law clerks themselves."

We heartily wish success to the Institution. Our readers are aware that all these associations have always received our best support, and the columns of "*The Press*" will no doubt record the progress of this new society, and give it the encouragement it deserves.

REPORTS DIGESTED IN THIS VOLUME.

Court.	Reporters.	Abbreviations.	Vol. and Part.
House of Lords - - -	Clark & Finnelly - - -	H. of L. - - - -	Vol. 1, Parts 2, 3, 4.
Privy Council - - -	Moore - - - - -	Moore - - - - -	Vol. 5, Parts 1, 2.
Lord Chancellor - -	{ Phillips - - - - -	Phill. - - - - -	Vol. 2, Part 5.
	{ M'Naghton & Gordon - - -	M'N. & G. - - - -	Vol. 1, Part 1.
	{ Hall & Twells - - - - -	H. & T. - - - - -	Vol. 1, Part 1.
Master of the Rolls - -	Beavan - - - - -	Beav. - - - - -	Vol. 10, Part 3.
Vice-Chancellor of Eng- land - - - - -	} Simons - - - - -	Sim. - - - - -	Vol. 16, Part 1.
Vice-Chancellor Knight Bruce - - - - -			
Vice-Chancellor Wigram	Hare - - - - -	Hare - - - - -	Vol. 6, Part 4.
Queen's Bench - - -	Adolphus & Ellis, N. S.	Q. B. - - - - -	Vol. 9, Parts 3, 4.
Common Pleas - - -	{ Manning, Granger, & Scott, N. S. - - - - }	C. B. - - - - -	Vol. 4, Parts 1, 2, 3, 4, 5.
	{ Welsby, Hurlstone, & Gordon - - - - }		
Exchequer of Pleas	{ Welsby, Hurlstone, & Gordon - - - - }	Exch. R. - - - - -	Vol. 1, Parts 4, 5.
Practice Court, Queen's Bench, Com. Pleas, and Exchequer - -	{ Dowling & Lowndes - -		D. & L. - - - - -
All the Courts. - - -	Legal Observer - - -	L. O. - - - - -	Vols. 36 & 37.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY MAY 5, 1849.

PROGRESS OF LAW REFORM.

On opening a New Volume, which will extend beyond the present Session, it will not be inappropriate to notice the several projects for the alteration of the Law which are already before the Legislature, or which it is expected will soon be introduced; and it will be convenient to arrange them under the several departments of the Law to which they belong.

1st. We shall first select those which relate to the *Law of Property and Conveyancing*. Here we find Lord Brougham's Bill to extend the Act for "facilitating the Transfer of Real Property," by compelling the Taxing Officers to exclude the consideration of the *length* of Deeds from their estimate of the remuneration of Solicitors for conveyancing transactions, and confining the fees to be allowed to the amount of skill displayed in the instrument, and the quantum of responsibility incurred:—to be calculated, we presume, with reference to the complexity and difficulty of the case and the magnitude of the property. Next comes Mr. Drummond's extraordinary plan for an optional Registration of Title Deeds,—rendering titles absolute after thirty years, upon notice in the *Gazette*,—and conveying estates by a few words entered on the Registry "without more ado." This is followed by Mr. Headlam's Bill with regard to trust property, for enabling the transfer thereof by an order of Court, in lieu of a deed, and to perform other brief and summary exploits with railway speed. The Amendment of the Law of Copyholds is undertaken by Mr. Aglionby, to authorize compulsory *commutation* if not *enfranchisement*, and to this we wish good speed. The improvement of the law relating to Landlords and Tenants is proposed by Mr. Pusey; followed by Sir R. Inglis, on Pa-

chial Assessments, and by Mr. Hume on County Rates. These, we suppose, are designed to "relieve the burdens upon land."

Other propositions are introduced with respect to different kinds of property, namely, the Assignment of Life Policies, by Mr. Fagan; the Transfer of Shares in Joint Stock Companies, and the Regulation of Joint Stock Banks of Limited Liability, by Mr. Headlam; and the Partition and Sale of Joint Chattels, by Mr. Roundell Palmer,—to which measures, after due consideration, there may probably be no objection.

We may advert separately to the bills of the Solicitor-General, relating to Charitable Trusts in England, and to Encumbered Estates in Ireland, for they bear as well upon the Law of Property, as upon the Administration of Justice and the Practice of the Courts. They are both designed, we understand, (for we have not yet seen the bills,) to substitute Commissioners, (barristers, as usual, of seven years' standing,) in the place of the Court of Chancery.

2nd. The bills affecting the *Administration of Justice* may next be enumerated. In this department stands prominently Lord Brougham's bills for Consolidating and Amending the Bankrupt Law and the Law of Evidence. On the former we have often addressed our readers, and the substance of the latter measure will be found at p. 5, *post*. The Improvement of the Remedies of Sequestrators is proposed by Mr. Mullings:—the Further Substitution of Affirmations in Lieu of Oaths, by Mr. Wood,—the Law of Attorneys in Ireland, by Mr. Hamilton, and provisions relating to Inquests in Cases of Fire, by Mr. Wyld. In Criminal Law, the Attorney and Solicitor General propose certain amendments in the Administration of Justice in the Metropolitan District, and particularly in dispensing to a considerable extent with Grand Juries;

Mr. Ewart has again proposed the Abolition of the Punishment of Death, and Lord Brougham (taking a wide field) suggests the consolidation and amendment of the whole code of **Criminal Law**. The **Offices** of the Clergy are to be corrected under a bill introduced by the Bishop of London.

Under this head we would also class the intended bill for the **Repeal of the Certificate Duty** on Attorneys and Solicitors, as one of the taxes on the Administration of Justice, bearing most unjustly and unequally on the larger branch of the profession.

3rd. Whilst our legislators are thus busy with the Reform of the Laws of Property, and its Transfer, and with the Administration of Justice, civil and criminal, many of their body are also engaged in the task of amending the *Law of Parliament* itself, and securing the independence of the members and the purity of their election! Thus the Lord Chancellor has a bill for **Preventing Corrupt Practices at Elections**, but at present indefinitely postponed; and the same subject has been taken up in the House of Commons by Sir J. Pakington. Lord Brougham in the Upper, and Mr. Moffat in the Lower House, aim at the expulsion of Insolvent Members. Lord John Russell wishes to modify the parliamentary oath in order to admit the Jews; Sir De Lacy Evans proposes further to modify the qualification of electors, and Mr. H. Berkeley to establish Vote by Ballot.

4th. Then there are various bills not coming under any of the above classes, of a *general or miscellaneous* kind. The Law of Marriage, with regard to the prohibited degrees of affinity, will be considered under Mr. J. Stuart Wortley's Bill. Sir H. Inglis also proposes an alteration in the Law of Marriages Abroad, and Mr. Ewart, we understand, has also an amendment to suggest.

The measure for altering our ancient Navigation Laws is under the official charge of Mr. Labouchere, but the Premier and the whole government are pledged to support it. The further Regulation of Vessels conveying Passengers by Sea is also before the House, and the subject of Friendly Societies is under the consideration of a Select Committee.

The Law of Scotland in regard to Marriages and the Registration of Births is proposed to be amended by Lord Campbell.

BANKRUPT LAW CONSOLIDATION BILL.

WE understand that the Lord Chancellor has expressed a very unqualified disapproval of this measure, as amended by the Select Committee, and that his lordship's hostility—which may be considered that of the Government—will probably operate to prevent the bill from passing through either House of Parliament during the present Session. This announcement has created some dissatisfaction amongst the gentlemen in the City, who have formed themselves into a society for the purpose of effecting an amendment of this branch of the law, and we learn that they have appointed a deputation, who propose to wait on Lord Cottenham, and endeavour to persuade him to mitigate or withdraw his opposition to the bill.

We do not differ from the Metropolitan Society of Merchants and Traders, in thinking, that the bill as it stands, though very different from what it ought to be, is an improvement on the existing law; but in matters of such undefinable importance as those involved in an extensive change in the Law of Debtor and Creditor, the nature and sufficiency of the change is vastly more material than the period at which it is effected. No doubt the subject has undergone much discussion, and some advances have been made towards framing a measure likely to afford satisfaction, but the number and character of the alterations made in the bill after it was submitted to a Select Committee in the present Session of Parliament, have rendered it manifest that great differences of opinion exist amongst practical men, which differences are not altogether confined to matters of detail. Under such circumstances, we cannot concur with those who think the delay of a Session is ground for complaint against the Lord Chancellor, whose position affords him an opportunity of taking a more comprehensive, and not less accurate, view of the question, than some, who with more leisure have not the same materials for forming a correct judgment.

If the Bill now before parliament can be so altered and amended during the present Session as to afford any reasonable hope that it will justify the expectations of the trading and commercial community, we shall regret to find any impediment thrown in the way of its becoming law; but if, as we incline to think, a more perfect and satisfactory measure [may be framed, after

mature deliberation and further inquiry, we are satisfied the public will not have any good reason to complain if the matter should be postponed for another year.

Those who have undertaken the conduct of bills in parliament relating to the Law of Bankruptcy and Insolvency for some years past, seem to have concluded that because much was required and expected something must be done. Constant changes were, therefore, introduced in the law, with no better result than to render its administration so intolerable and unpopular, that every conceivable device is resorted to, by creditors as well as debtors, in order to avoid the Court of Bankruptcy. Whether it comes a Session sooner or later is not so important as that the next change should be effectual, and redeem the law from the discredit which injudicious and inconsiderate alterations have sensibly aggravated, if not produced.

DEFECTS IN THE SYSTEM OF LIFE INSURANCE.

OUR attention has been recently called to the principles on which Life Policies of Insurance are effected, and to the defects which prevail in many of the plans on which Insurance Companies are founded. It is to the honour of the Directors of these societies in general, that they rarely avail themselves of the grounds of resistance which so abundantly exist in a large proportion of the claims made upon them. If they chose to act rigidly on the objectionable terms contained in almost all contracts of insurance, a large proportion of them could not be enforced.

In a pamphlet on the "Defects in the Practice of Life Assurance, and Suggestions for their Remedy, with Observations on the Uses and Advantages of Life Assurance, and the Constitution of Offices," published by W. S. Orr and Co., the following just description is given of the general practice adopted on entering into these important contracts :

"Suppose the common case of a person, in the enjoyment of good health, desirous of procuring a policy of assurance upon his life, for the benefit of his representatives at his death, or which he may employ during his life, as a document of security. He applies at the office, and fills up and signs the usual form of proposal for an assurance, containing generally a dozen or more questions, all of which he answers conscientiously, and as correctly as he can. He refers the company, for further in-

formation, or rather it may be said, for confirmation of his own statements, to his doctor, and to a friend. To the doctor, and the friend, the company dispatch other sets of questions, in different forms, generally more precise and searching than those submitted to the applicant himself. On these being received by the company, they are placed with the other papers connected with the case, but are not shown to the applicant; who is then examined by the medical adviser, and called upon to answer a different series of questions, relating chiefly to past events, and involving an opinion as to the state of his health at all periods since infancy, and his recollections and notions as to the nature of the different ailments, which he or any of his family, or relatives, may have had.

"These several documents, viz.,—the proposal, the reports of the private medical adviser, and friend, the statement made to the company's medical adviser, and his report, generally contain upwards of two hundred interrogatories and answers: many of them being repetitions of the same question; some of them relating to matters of fact of which the parties are cognizant; most of them to circumstances of which the persons applied to can have obtained a knowledge only by hear-say or collateral evidence; and many of them are mere matters of opinion, as to which different persons may have different notions; and to the questions relating to such matters, it may be expected that the answers from the several persons, the proposer, the friend, the medical attendant, and the company's medical examiner, will not all be in unison. These papers being completed, and the premium paid, the policy is granted, and the assurance is supposed to be complete."

But the policy contains a proviso that "every statement, declaration and all testimonials and documents addressed to, or deposited with the company in relation to the assurance shall be in *all respects true*,"—and that these statements shall be held as *warranted*. The effect of these clauses has been determined by various decisions of the Courts, and we believe the following correctly sets forth the present state of the law :

"That if in the statements referred to, and which are declared to be the basis of the contract, and to form matters of warranty, any fact, whether material or immaterial, has been erroneously stated, whether intentionally or not—or if any information considered important, have been omitted to be communicated, although the party applied to for information, did not consider the omitted fact to be of the slightest importance, *the policy is void; and all premiums paid, become forfeited to the company*. We shall find that it is not enough, that the written proposal and declaration, made by the assured, are unobjectionable. The

friend's report and that of the medical referee, and all statements made by the person whose life is the subject of assurance, are regarded in the eye of law, as statements of the assured party; although he neither wrote them, nor had an opportunity of seeing them. The policy is so prepared, that the assured enters into a positive engagement, that all these statements are in point of fact strictly and literally true; whether he was aware of them or not. Such an engagement, being in legal language a *warranty*; and the effect of a warranty being to render the facts alleged in it a condition precedent of the assurer's responsibility, it follows that the obligation undertaken by the office, is only effectual, "if" and "in the event that," each of the many statements, whether material or of no importance, is *literally* as it has been represented."

This doubtful condition of things,—the risks thus run,—could not fail to alarm a large number, at least, of the assured, and those whose interests are intended to be protected by policies of insurance; but, happily, not only the known integrity of the directors, but the true interests of the associations over which they preside, ensure a fair, just, and even liberal interpretation of the contract. Still we feel bound to give publicity to the following remarks on the possible, if not probable, evil of the present system, and the remedy suggested:

"Granting that policies may sometimes be fraudulently obtained, whether is it better—more fitted to give full scope and development to the manifold advantages of life assurance, that assurance companies should be tied down to a reliance upon their own care and vigilance in granting assurance,—that, instead of having permission to ask a jury to say, *after a man is dead*, whether his representations have been correct, they should be required to take sufficient pains to ascertain that fact for themselves *while he is alive*, and that thus a policy of assurance should have an indefeasible stamp of value so affixed to it, that it can be freely and safely used for all the purposes for which such a security can be made available;—or that, in order to relieve companies from the necessity of exercising vigilance and caution in the taking of risks, or at least to protect them from the remote danger of such frauds as no vigilance will guard against, the value of every policy should be liable to depend upon the issue of an inquiry, to be conducted by the holder single-handed (in many cases a *widow or infant family*,) against a *powerful and wealthy association*, possessing all the advantages which wealth gives over poverty in such a struggle.

"The question does not appear a difficult one to answer. Indeed the answer has almost been given already. A policy of *assurance*, which does not make the holder sure of receiving the amount stipulated in it, is a contradic-

tion in terms. The very object of the assurance is, that there may be no doubt as to the result. If there is to be risk after all, it would be better that each man should take the risk of his own life, and simply accumulate his savings. In all the uses which may be made of a policy of assurance—uses which are multiplying and extending every day—its value is injuriously affected by every doubt which can attach to its ultimate validity. This is in fact a fraud upon the assured. They pay for assurance, and they do not get it.

"The only objection to this is, that it would be unsafe for assurance companies to make policies absolutely indisputable, that they would be subject to frauds which might seriously affect their stability. This objection would be fatal if well-founded; for no system of assurance can be ultimately beneficial to the assured, which is not safe to the assurers. But we are satisfied that the objection greatly overrates the danger. A company which knows that it is estopped from disputing a policy once granted, will, of course, take sufficient care to ascertain the real state of the risk before granting the policy. This, as experience proves, is not a matter of difficulty. All the facts regarding a man's present state of health and habits, which it may be possible to prove before a jury ten or a dozen years hence, may, in the general case, be discovered on proper inquiry now; and a company which, knowing that a policy once granted can never afterwards be disputed, will use every possible precaution to secure that none shall be granted which they would have an interest to dispute. There is not the slightest reason to believe that the foundations of such a company are not at least as secure as those of any other company whatever.

"The remedy for the uncertainty with which life assurance is now beset, and litigation such as we have described, and which unless a remedy be provided is likely to increase, is alike simple and efficacious. Let life companies to be formed, insert in their deeds of settlement, a clause prohibiting them from disputing any policy they have granted,—a clause to that effect has already been approved by the registrar of Joint-Stock Companies,—and let the existing companies make sufficient inquiry before granting an assurance, abolish the warranty clause, and grant unrestricted policies. The principle of the *indisputability* of policies is indeed the only one deserving the name of assurance. Wherever there must be a reliance upon the honour, or generosity, or sense of interest of others—there is uncertainty and risk. No one can tell what other feelings may come into play to prevent these from operating. A claim which cannot be set aside or even disputed, is the only result to which a wise man can look forward with any satisfaction, as the end of the transaction on which he enters when he assures his life."

LAW OF EVIDENCE AMENDMENT BILL.

LORD BROUGHAM has just introduced a new bill, the substance of which is as follows:—

To render the husband and wife good evidence; but a party charged with an offence is not to be compellable to give evidence; and the act is not to extend to proceedings in consequence of adultery; nor to repeal the provisions of 7 W. 4, & 1 Vict. c. 26, as to wills.

Entries in books of account by merchants, &c., admissible in evidence; and the uncorroborated testimony of a single witness sufficient to support a judgment in all Courts and in all cases.

It is also to be provided that the Common Law Courts may compel an inspection of documents whenever equity would grant a discovery.

The seal or signature or judicial character of a person signing certified copies of foreign and colonial acts of state, judgments, &c., are to be deemed sufficient proof; so apothecaries' certificates to be admissible without proof of seal; and documents admissible without proof of seal, &c. in England or Wales equally admissible in Ireland, and *vice versa*; and documents admissible without proof of seal, &c. in England, Wales, or Ireland, equally admissible in the colonies.

Registers of British vessels and certificates of registry are also to be admissible as *prima facie* evidence of their contents, without proof of signature, &c.

The forging seal, stamp, or signature of documents, or wilfully uttering the same, declared to be felony.

The act is not to extend to Scotland, nor to apply to proceedings already commenced.

STATE OF THE PROFESSION AND LAW REFORM.

SEVERAL very important as well as useful articles appear in the new number of the *Law Review*. Those which immediately and personally concern our readers are—The State of the Profession;—The Reform of the Inns of Court;—and The Law of England considered as a Science. We shall have from time to time to bring several of the topics contained in these papers under discussion.

On the prominent measures of Law Reform, there are articles on the Registry and transfer

of Land;—on the Bankrupt Law Consolidation Bills;—and on the Land measures for Ireland, with Sir Robert Peel's plan.

The other articles comprise the Law of Real Property in Scotland;—the Doctrine of Nudum Pactum in the English Law;—the Reports and Proceedings of the Law Amendment Society;—Notices of New Books, and a memoir of the late Mr. Starkie.

QUESTIONS AT THE EXAMINATION.

Easter Term, 1849.

The usual preliminary questions were put and then followed—

II. COMMON AND STATUTE LAW, AND PRACTICE OF THE COURTS.

5. What is the period limited for enforcing a simple Contract Debt? and what steps are requisite to prevent the operation of the Statute of Limitations?

6. If a writ of summons cannot be served on a defendant, what steps should be taken to compel his appearance?

7. What facts must be stated in the affidavit on which an application for a writ of *capias* to hold to bail is grounded?

8. What is the meaning of a judgment non obstante veredicto? and what effect has it on the action, and especially the costs?

9. When a party gives a warrant of attorney, by whom must it be attested, and what must the attestation state?

10. What are the consequences of joining too many plaintiffs in an action of contract?

11. When an action of contract is brought against one only of several partners, what step ought the defendant to take?

12. When a judgment has been recovered against the registered officer of a joint-stock company, can it be enforced against the individuals forming that Company, and by what means?

13. When a landlord distrains for rent, within what time must he proceed to sell the goods distrained?

14. What is the first proceeding in an action of ejectment? Upon whom must it be served, and where?

15. Can a landlord distrain the goods of lodgers for rent due from his own tenant?

16. When the attesting witness to a deed is dead, what is the proper mode of proving the execution of it?

17. After what period of time is the necessity of proving the execution of a deed dispensed with?

18. If a plaintiff brings back the venue, when changed by the defendant, upon the usual undertaking to give material evidence within the county, and fails to do so, what will be the consequence at the trial?

19. Are there any circumstances under

which a feme covert can sue alone, and what are they?

III. CONVEYANCING.

20. What is the largest estate, or interest in land, that can be conveyed by one person to another?

21. What are the present modes of conveyance for passing away freehold land?

22. How is copyhold land usually conveyed, i. e., by what mode of assurance?

23. If land be conveyed to the use of A. and the heirs male of his body, what estate does he take?

24. By what means can a tenant in tail convert his estate tail into an estate in fee?

25. If land should be conveyed to the use of A. and B. and their heirs, what would be the nature of the estate which they would take?

26. If it be required to pass land by deed to A., B., and C., as tenants in common in fee, what words should be used in the operative part of the deed to vest such an interest in them?

27. State shortly such covenants on the part of a vendor of land as in his conveyance to a purchaser he is usually required to enter into.

28. In what manner should a testator execute his will to make it valid?

29. If a person die intestate, without leaving father, wife, or child, but leaving a mother, a brother, and two children of a deceased brother, how would the surplus of the intestate's estate be distributable?

30. If an intestate die, leaving a deceased brother's daughter, and two grandchildren of a deceased sister, how would the surplus be distributable?

31. If a person is desirous of selling a leasehold estate, and is unable to produce the original lessor's title, what course should he pursue to obviate, as far as possible, any objection to be taken by a purchaser on that account?

32. In case a lease of lands in Middlesex be not registered, will the registering an assignment of it cure that omission?

33. Is a purchaser of an estate sold, subject to a trust for payment of debts generally, bound to see to the application of the purchase money?

34. Would a contract for the purchase of land be impeachable or not by a vendor, on the ground of considerable inadequacy of consideration, but not of fraud?

IV. EQUITY AND PRACTICE OF THE COURTS.

35. What is the difference, in effect, between taking a bill *pro confesso* and filing a traversing note? and to what proceedings at law may they be compared respectively?

36. An answer serves two distinct purposes; what are they?

37. Explain the purport and effect of setting down a cause on bill and answer; and what proceedings at law does it correspond?

38. When is security for costs required from a plaintiff?

39. State the consequence of omitting the prayer for general relief.

40. Mention the principal cases in which a bill must be accompanied by an affidavit, and how is the omission of such an affidavit taken advantage of?

41. State the different ways in which a plaintiff tacitly waives his right to except to an answer for insufficiency.

42. What is the difference between an evasive and an insufficient answer, and how are they respectively treated?

43. State shortly the several steps for obtaining a full answer.

44. What matters interrogated to in the bill is a defendant protected from answering?

45. What is the rule in equity as to time, barring or not barring relief against a fraud?

46. What papers and documents is a defendant compellable to produce on motion for the plaintiff's inspection?

47. If a plaintiff changes his residence after filing the bill, and then amends, what is his duty with respect to such change, and what is the consequence of neglecting it?

48. What periods after appearance are allowed to a defendant for putting in his defence? In what cases is further time allowed, and how is it obtained?

49. When must a plea be accompanied by an answer?

V. BANKRUPTCY AND PRACTICE OF THE COURTS.

50. What are the three conditions required to constitute a bankrupt?

51. Give shortly the general description of a trader within the meaning of the Bankrupt Laws, and state the principle which determines whether a person is such a trader, in respect of the extent of his trading.

52. What must be the nature of the petitioning creditor's debt?

53. State shortly the several steps which must be taken for putting a trader in the Court of Bankruptcy.

54. Before whom should the petitioning creditor's affidavit be sworn? and may the solicitor for the fiat administer the oath? and must the petitioning creditor attend personally on opening the fiat?

55. What means has a person of annulling a fiat against whom it has been improperly issued? and within what time can he do so?

56. Specify generally the kind of debts which may be proved under a fiat.

57. What is the rule with respect to contingent debts?

58. What is the rule with respect to debts for which the creditors hold securities?

59. When must the bankrupt surrender? What is implied in such surrender? and what are the consequences of neglecting to surrender in due time?

60. Explain the purport, object, and effect of an "adjournment *sine die*" of the bankrupt's examination.

61. What is the effect of the Certificate? and what share have the Court of Bankruptcy, the Commissioner, and the creditors, respectively, in granting, suspending, or withholding it?

62. To what extent, and under what circumstances may a trader assign his effects as a security for or in payment of an antecedent debt, without committing an act of bankruptcy?

63. What acts of a joint stock company will be deemed acts of bankruptcy?

64. State the rights of the assignees as to property in the bankrupt's possession at the time of the fiat, but belonging to other persons.

VI. CRIMINAL LAW AND PROCEEDINGS BEFORE MAGISTRATES.

65. What are the two principal divisions of crimes and offences?

66. What is the effect of a conviction for an offence in either of the divisions or classes on the real and personal property of the party convicted?

67. What is homicide, and how many and what kinds of it are there? and give instances in each.

68. If a party is convicted of an offence which occasions a forfeiture of his property, and undergoes the punishment of transportation or imprisonment for the offence, is he enabled to have and retain property acquired subsequently to the expiration of the term of his punishment, notwithstanding the previous forfeiture?

69. What is now the Law with respect to Amendments, where there is a variance between written or printed evidence and the rest of it in the indictment or information?

70. How can questions of law in criminal cases be submitted to the consideration of the judges? and has there been any, and what, recent alteration in the law on this subject?

71. What is an information *ex officio*, and by whom and where filed? and must it be submitted to a grand jury before it is filed?

72. What is a criminal information, and how obtained, and where filed?

73. If a man be convicted of perjury, what effect has it upon him as a jurymen or witness?

74. Where several persons have been indicted, and, at the close of the prosecutor's case, it appears that there is no evidence against one of them, how can such person be called as a witness for the others?

75. Is the counsel for a prosecution bound to call every witness named on the indictment? or how can they be called to enable the prisoner to cross-examine them?

76. Is the oath of the mother of an illegitimate child alone sufficient to charge a person as the putative father thereof? or does it require to be supported by any, and what, kind of confirmatory evidence?

77. If a person admit himself to be the father of an illegitimate child, can the overseers of the poor of the parish in which it is born take a promissory note for payment of a

sum of money for its maintenance, and maintain an action against him upon it in default of payment thereof?

78. Has the Court any, and what, power with regard to the allowance of the costs of a prosecution?

79. On an information for a misdemeanour, where the prosecutor does not proceed to trial according to his notice, is he liable to any, and what, costs of the party accused?

ATTORNEYS' CERTIFICATE DUTY.

PETITIONS for the repeal of the tax have been presented during the last week from Barnstaple, Great Torrington, and Bideford, by Mr. Bremridge; from Folkstone by Mr. Brockman; from East Retford by Viscount Galway; from Crickhowell by Mr. J. Bailey, and from Shaftesbury by Mr. Sheridan.

It is fully expected that Lord Robert Grosvenor will be in London in a few days, and arrangements will then be made for bringing on the motion for the introduction of the bill.

NEW RULE OF COURT.

JUDGMENT AS IN CASE OF NONSUIT.

Easter Term, 12 Vict., 1849.

It is ordered, that where a rule for judgment, as in case of a nonsuit, shall have been discharged on a peremptory undertaking to try at the next, or any future assizes or sittings, if the plaintiff shall make default in proceeding to trial pursuant to his undertaking, the defendant shall be at liberty, if the plaintiff has not drawn up the rule, to draw it up at any time before moving for judgment, and thereupon to move for judgment without serving a copy of the rule on the plaintiff.

Read in Court, 24th April, 1849.

MOOT POINTS.

STAMPS ON DEEDS OF PARTITION.

*A. B. and C. are tenants in common under a devise. The property is freehold, and is valued altogether at 3,000*l.* The three tenants in common wish to effect a partition. For this purpose three deeds are employed, as unequal portions are allotted to the several devisees. A. takes a portion worth 1,500*l.*, B. a portion worth 1,000*l.* and C. a portion worth 500*l.* In the conveyance by B. and C. to A. 500*l.* will have to be given for equality of partition. Will the *ad valorem* duty have to be paid on 500*l.* on the conveyance to A. and a 3*5s.* stamp on that to B. and C., or in what manner and to what extent should the stamp duty be paid? Perhaps one of your intelligent correspondents will give me some light on the subject. Bythewood, as edited by Parker and Stewart, (ed. 1829,) p. 53, says the "conveyance of the smaller share" should pay the *ad valorem* duty.*

SCIOLVS.

NOTES OF THE WEEK.

ILLNESS OF LORD DENMAN AND JUSTICE WIGHTMAN.

THE profession will hear with satisfaction that Mr. Justice Wightman, although still having the appearance of delicate health, has been able to resume his judicial duties. It is now understood, that Lord Denman's illness was of such a nature, that a further respite from business was required, and that his Lordship will not appear in Court before the first day of Trinity Term, but we are glad to say, on the best authority, that his Lordship's health is expected to be fully re-established by that time.

WRITS OF ERROR.—HOUSE OF LORDS.

The Judges are summoned to attend the House of Lords on Thursday next, the 10th inst., to hear the arguments in the case of "*the Queen v. William Smith O'Brien*," brought by writ of error from the Court of Queen's Bench

in Ireland. The case is expected to occupy their Lordships for some days.

RESULT OF THE EXAMINATION.

The Candidates entitled to attend the Examination on the 1st instant were 98 in number, four of whom did not make their appearance. Of the remaining 94, nine were unsuccessful, and 85 passed. The Examiners were Sir Archer Denman Croft, Mr. Clarke, (the Vice-President,) Mr. Holme, Mr. Shadwell, and Mr. Bayley.

INCORPORATED LAW SOCIETY.

In consequence of the death of Mr. White of Essex Street, the Senior Member of the Council, and the resignation of Mr. R. W. Lumley, there will be two vacancies to be supplied at the next Annual General Meeting.

After the Annual Meeting, the Council will have to elect a new Lecturer in the department of Conveyancing.—Mr. Fielding Nalder having completed his able course of Lectures.

RECENT DECISIONS IN THE SUPERIOR COURTS

AND SHORT NOTES OF CASES.

Lord Chancellor.

Stewart v. Forbes. March 16, 17, 21, 23, 28, 29, 30; April 19, 1849.

APPEAL.—ISSUE AT LAW.—PARTNERSHIP.—ACCOUNTS.

Held, that an appeal will lie where the opinion of the Court is taken by consent without directing an issue in a Court of law, if a decree can be pronounced without a trial at law.

Held, also, that entries in the books of account of a partnership showing the proportion the plaintiff took were conclusive, in the absence of any other deed or proof, of proportion of shares.

THIS bill was filed by Mr. Stewart, for some years partner in the East India House of Sir Charles Forbes and Co., and sought a declaration that, during such partnership, he was entitled to share equally with Sir Charles Forbes in the profits of the business, including a fund called the "Suspension Shares," which was set apart out of the business assets to meet an anticipated loss upon the Java property; but the loss not occurring, Sir Charles Forbes claimed the fund. For the plaintiff it was contended that, as there were no articles of partnership, he must be considered as a half partner. This claim was denied on the part of the defendant, and it was alleged that Sir C. Forbes had always managed the entire business, and found the money for carrying it on, and had power to take in partners at his will. It was also alleged, that during the years Mr. Stewart received a moiety of the profits, he did so, not through any right, but merely through the bounty of Sir C. Forbes. The Vice-Chancellor

of England had dismissed the plaintiff's bill with costs, whereupon the appeal was presented.

J. Parker, Rolt, and A. Smith, for the appellant; *Bethell, Lewis, and Schomberg* for the respondents.

The Lord Chancellor said, that an objection had been taken to the hearing of the appeal on the ground that the decision of the Court below was taken by consent, instead of going again before a jury to ascertain the proportion in the partnership to which the plaintiff was entitled, and that, therefore, it was final; but the point decided was an equity, from which an appeal would lie, unless it could not be decided without an issue at law, and in that case the parties were concluded by their consent. A similar objection had been raised in *Morris v. Davies*, 5 C. & F. 163, to the hearing of an appeal in the House of Lords from the decision of Lord Lyndhurst, but the appeal was heard. The plaintiff had, however, entirely failed to make out his claim to an equal partnership. An equal partnership would be presumed in the absence of any stipulation as to the proportions, *Peacock v. Peacock*, 16 Ves. 49, but it must be not only a supposed but a *de facto* equal participation in the profits. The entries, however, in the books of accounts, showed that the plaintiff took only in four-sixteenths, and these must, in the absence of any other deed or proof of the shares, be held to be conclusive. The decree of the Vice-Chancellor would, therefore, be affirmed, and the appeal dismissed.

April 27.—*In re the London and Manchester Direct Independent Railway Company.*—Application refused to stay proceedings under an order of this Court for winding-up company,

until the appeal to the House of Lords was disposed of.

— 27.—*In re Fisher, Ex parte Nesbitt*—Petition for commission in lunacy to stand over.

27.—*In re Nesbitt*—Petition to pay lunatic's money into Court refused with costs, on the ground that it was premature.

— 27, 28.—*In re Brown*—*Cur. ad. vult.*

May 2.—*Alvanley v. Kinnaird*—*Cur. ad. vult.*

Rolls Court.

Attorney-General v. Corporation of London and others. Jan. 29, Feb. 17, 21, 22, 24, 26, April 4, 1849.

CORPORATION.—OWNERSHIP IN BED, SOIL, AND SHORES OF RIVER.

Held, that the corporation were not protected from discovering their title to the bed, soil, &c., of a river, where it appeared that they were conservators of the river, and as such therefore in a fiduciary character.

THIS suit was instituted by the Crown, claiming to be entitled to the bed and soil and shores of the river Thames between high and low water mark, as against the defendants, who claimed to be the owners of the bed and soil and shores thereof, and praying that the respective rights of the crown and the corporation might be ascertained and declared, and, if necessary, that issues at law might be directed. It also prayed that until the determination of such rights, the construction of the embankments licensed by the corporation might be restrained, and that if the result of the suit were against the corporation, the licenses might be declared void and consequential relief granted. The corporation demurred, but the demurrer was overruled by the Master of the Rolls, and, on appeal, by the House of Lords. They then answered, and asserted a prescriptive right to the ownership of the bed and soil and shores of the river, denying the title of the Crown, and alleged that their title was recognised, saved, and reserved by various charters and acts of parliament, and had been acquiesced in by the Crown from time immemorial. They, however, declined to set out the charters on which they relied, alleging that they were the evidences of their title. They also refused to set out a list thereof, on the ground that it might lead to a discovery of the evidence on which their title rested, contending that they were not bound to disclose their title to the Crown, as an adverse litigant.

Exceptions had been taken to the answer of the corporation on the ground of insufficiency, and the Master, upon reference to him, had allowed the exceptions and reported that the answer was insufficient. The cause now came on upon exceptions to the Master's report, and the question was, whether the defendants were bound to make the discovery required by the information as to their title.

The *Solicitor-General*, Turner, and Maule,

for the Crown; Bethell and Randall for the Corporation.

The Master, of the Rolls said, that the defendants had answered to some extent, and insisted that they had stated a sufficient title in opposition to the Crown, and were not bound to set forth further particulars of their title. The defendants alleged that they had from time immemorial been in the actual possession of the bed and shores of the river between high and low water mark, and had exercised various acts of ownership over the same. This claim was obscurely expressed, but was explained to be a claim to be entitled by prescription to the bed and shores of the river, between high and low water-mark. The corporation further stated that they held the office of bailiffs or conservators of the river, and that the office had been exercised by the Lord Mayor for the time being; and that they received tolls, &c. But the Crown was by the common law entitled to the bed and shores between high and low water-mark of all the navigable rivers in the kingdom, and that right, therefore, extended to this river, unless excluded by some special circumstances. The office of conservator implied a delegated authority, and was inconsistent with the claim of ownership on the part of the corporation. The office must, therefore, be considered as derived from the Crown, either by grant or by act of parliament, made with the consent of the Crown. The office being thus derived, it must be held to be of a fiduciary nature, and the corporation were bound to exercise their office of conservators, so as not to encroach on the right of the Crown, and acts by them, which had the appearance of acts of ownership, had less force than they would have had under other circumstances. Having regard, therefore, to the circumstances of the case, the nature of the claim, and the relation existing between these parties, his Lordship declared the corporation not entitled to be protected from the discovery, and that the exceptions to the Master's report must be overruled.

Lewis v. Elliot and others. April 17, 1849.

JURISDICTION.—ATTORNEY.—PROCEEDING FOR COSTS.

Injunction dissolved restraining attorneys from proceeding for costs, but execution not to issue on the judgment obtained, but to apply for leave to bring money into Court.

THE plaintiff and George Pringle, since deceased, published, in 1835, a Topographical Dictionary of Ireland, and employed defendant, James Elliot, a solicitor, to collect subscriptions. The defendant, accordingly, received the names of about 7,000 subscribers, but the subscription-money not being paid, Messrs. Dunne and Marshall, solicitors of Dublin, were employed to get payment thereof. Whereupon they, without the plaintiff's authority, commenced 3,000 actions to recover the subscriptions. One of these actions was tried in

February, 1842, and a verdict obtained, and many of the other subscribers then paid. The solicitor afterwards brought 1,300 other actions against such subscribers as had not paid, but entered into an agreement with the plaintiff only to charge the costs out of pocket, and to receive the costs from those persons against whom they recovered the subscriptions. Eliot subsequently became the solicitor, and he made a claim of the plaintiff of about 2,000*l.*, for costs, &c., and upon the claim being resisted, brought an action to recover the amount. This bill was therefore filed for an account of the subscriptions and receipts, and an injunction was obtained to restrain the defendants, James Elliot, William Dunne, and James Jackson Marshall, from proceeding with the action at law.

Roupell and Terrell now moved for the dissolution of the injunction; *Turner and Hardy* contra.

The *Master of the Rolls* dissolved the injunction so far as it restrained the proceeding with the action. Execution was, however, not to be issued upon the judgment that might be obtained, but defendants were to be at liberty to apply for leave to bring the money into Court.

Ellis v. Maxwell. April 19, 1849.

THELLUSSON ACT.—WILL.—CONSTRUCTION.

Upon construction of a will, Held, that the parties were entitled to the income arising from the property, it being personality and having accumulated for 21 years, the period limited by the Thellusson Act.

THE testator, William Maxwell, by his will dated 25th March, 1818, gave to his wife an annuity of 1,000*l.* for life, and to his son John a like annuity, to be increased under certain circumstances as in the will mentioned. The testator then directed the residue of the rents, &c. to be invested and accumulated, and form part of the personality, and the trustees were to stand seised thereof, subject to the charges created thereon, to the use of the first son of his son John, in tail male, remainder to the other sons successively in tail male, with remainder to the use of the first son of his daughter Anne Lyte in tail male, with remainder to the use of the other sons successively in tail male, with remainders to the daughters of his son John and daughter Anne Lyte, as tenants in common in tail male. Anne Lyte had no child born at the testator's death in September, 1818, but had since four children, one of whom was 21 on the 29th September 1839. The cause was heard in 1841, when his lordship was of opinion that the direction for accumulation was void after the expiration of 21 years, and it now came on for further directions.

Spence, Turner, Bageham, and Willcock, for the respective parties.

The *Master of the Rolls* said, the question was, whether the income of the fund which could not be further accumulated was now

payable to those persons who had a vested interest therein. The fund was directed to be invested, and not distributed until a future time, and money was to be applied for maintenance and education. The property vested on the children attaining 21, but it was not transmissible until the death of the two annuitants under the will. The question was, whether the testator meant the children to enjoy the fruits on their attaining 21? As they had all attained 21, the property vested in them, and they were entitled to have the income of the property paid to them, excepting those particular things which the testator had excluded. With respect to the real estate, the testator, considering it not subject to the provision of the Thellusson Act, had expressly directed that the rents were to be treated as personal estate, and were to be disposed of as directed by the will, i. e., accumulated. The property to which this direction applied was therefore to be considered as portion of the personal estate received from year to year, and could not therefore accumulate beyond the 21 years under the statute.

April 26.—*Kennaway v. Tripp*—Order to give security for costs.

—26.—*Williams v. Bryant*—Motion to pay purchase-money into Court refused, as the notice was irregular—Leave to amend.

—27.—*Hope v. Hope*—Stand over to the first day of causes in Trinity Term.

30.—*Attorney-General v. Rees and others*—Exceptions to Master's report allowed—Six weeks' time to put in further answer.

April 27, 28, 30, May 1, 2.—*In re Barchell and others*—Part heard.

May 1.—*Grand Junction Canal Company v. Dimes and others*—Cur. ad. vult.

—2.—*Child v. Clive*—Plea overruled.

—2.—*Morgan v. Morgan*—Stand over.

Vice-Chancellor of England.

Attorney-General v. Wilshere, Wilshere v. Harwood. April 24, 1849.

CLAIM OF THE CROWN.—TESTATOR.—NEXT OF KIN.

Testator gave certain sums of money to his daughter for life, with remainder to her children on attaining 21 or marriage; the children attained 21, but died before the daughter; Held, that they took vested interests.

And held, therefore, that the Crown was entitled to their shares, as their father left no next of kin.

THIS was an information against the representatives of a testator named Harry Harwood, by the Crown, claiming to be entitled to certain property left by him to the children of Bishop Linscombe, who died without leaving any next of kin. The testator by his will, dated in 1793, gave two sums of 1,500*l.* to his daughter, who was wife of the bishop, for life,

with a general power of appointment, and in default of such appointment, to her children at 21 or marriage, as tenants in common. If no child or children of the marriage attained a vested interest, to his son Harry Harwood for life, with power of appointment and divers remainders over. The testator afterwards by a memorandum expressed his intention to give 5,000*l.* 3 per cent. consols also to his daughter for life, with remainder to his said son and his lawful issue. His son was likewise thereby appointed his sole executor and residuary legatee. A declaration of trust to carry out the will was executed in November, 1810, but the memorandum, although placed with the will, was not proved. It appeared that Bishop Luscombe had three children, all of whom attained 21, but died in the mother's lifetime. Bishop Luscombe was now dead, and no next of kin could be found; the Crown claimed, therefore, the children's shares.

Cooper and Lewis for the representatives of the son Harry Harwood; the *Solicitor-General*, J. Parker, Horace Twiss, Wray, Borrett, and Earle, for the respective other parties.

The *Vice-Chancellor* held, that the children of Bishop Luscombe took vested interests in the property, and that, therefore, the Crown was entitled to their shares.

April 26.—*London and North-Western Railway Company v. Smith*—Injunction to restrain the defendant from proceeding to compel the plaintiffs to issue their warrant to the sheriff to empanel a jury to award compensation for injury done to premises by railway, refused with costs.

—27.—*Wright v. Warren*—Judgment on construction of will—Reference as to whether the testator was an original shareholder in certain companies.

—27.—*In re Crickett's Trust*—Costs of trustees taking the opinion of counsel refused—the other costs to be paid.

—27.—*In re Lancashire and Carlisle Railway Acts*—Money invested by the railway company ordered to be paid out to the petitioners—The costs of this application, &c., to be borne by the company.

—28.—*Sisney v. Ely*—Demurrer to a bill to set aside annuity deed overruled.

May 2.—*Watts v. Symes*—Judgment on construction of mortgage deed.

Vice-Chancellor Knight Bruce.

Ex parte Fenwick, In re the North of England Joint-Stock Banking Co. Feb. 28, 1849.

JOINT-STOCK WINDING-UP ACT.—CONTRIBUTORY.

A. B. purchased certain shares in a banking company and transferred them to C. B., in trust for A. B.'s two sons, at the same time indemnifying C. B. against all calls, &c. C. B.'s name was alone registered.

Held, affirming the Master's decision, that

C. B., and not A. B., was a contributory in respect of such shares.

RICHARD FENWICK, in 1843, transferred 195 shares in the above-mentioned company to his brother John Fenwick, of North Shields, in trust for himself for life, with remainder to his two sons, and in the declaration of trust which John Fenwick executed in favour of the sons, covenanted to indemnify him against all losses and expenses arising from the trust. Upon a reference to the Master to wind-up the affairs of the company, under the 11 & 12 Vict. c. 45, he had returned the brother's name, which was alone registered, as "contributory" in respect of these shares.

An application was thereupon made to reverse this decision, on the ground that the evidence showed that the father was the proprietor of the shares, and that therefore his name ought to have been inserted in the list as a "contributory."

Bacon, Lloyd, and Headlam, in support of the application; Lee and F. S. Williams, contra.

The *Vice-Chancellor* said, the Court had at present nothing to do with the father's liability to indemnify the uncle in respect of the shares, or with his liability to the creditors of the company. The only question was, whether the uncle's name was properly inserted in the list as a "contributory," under the 11 & 12 Vict. c. 45, s. 3. The Master's decision must be affirmed, and the motion refused, with costs.

Cooper v. Shropshire Union Railway and Canal Company. Jan. 22, 1849.

A canal and a railway company were both dissolved and a united company formed, and the debts of both of the old companies were charged on the new united company: Held, that a suit will not lie to restrain the payment of a mortgage debt of one of the former companies.

THIS suit was instituted by shareholders, who questioned the power of the directors to make a call for the purpose, amongst other things, of paying an instalment on a mortgage debt of 300,000*l.*, due to the Royal Exchange Assurance Company. The railway was formed in 1846, by an act passed in August, which united the Ellesmere and Chester Canal Company, (then already united with the Birmingham and Liverpool Canal Company,) with the Montgomery and Shrewsbury Canal Company, and the act authorized the conversion of the canals into railways, and the formation of such new railway as might be required. Prior to this act, an act had been obtained authorizing the directors of the Ellesmere and Chester Canal Company to raise money to pay off the mortgage debt. The whole of the debts and liabilities, including this debt, had been charged upon the united company. An instalment having become due, the directors of the Union Railway made a call, and the present bill was therefore filed.

Bacon and *Speed* appeared in support of a demurrer to the bill by the company for want of equity; *Russell*, *Makins*, and *Westoby*, in support of the bill.

The Vice-Chancellor said, that in conformity with the cases of *Foss v. Harbottle*, 2 Hare, 461; *Mozley v. Alston*, 1 Phill. 790; the demurrer must be allowed with costs.

Davall v. New River Company. April 19, 1849.

RIVER COMPANY SHARES.—TRUSTEE.—HEIR.

Testator devised certain shares in a river company to a trustee upon such trusts as he might create by a codicil but the codicil was not duly attested. The testator having no heir at law, a reference was made to inquire who was the trustee's heir.

Semble, such shares are to be deemed as real estate.

RICHARD Harris, by his will bearing date 1822, gave all his property (including a portion of a share of the adventurers' moiety in the New River Company,) to *John Hester*, in trust for such purposes or legacies as he might create by any codicil. The testator, in 1823, made a codicil, but it was not duly attested. *John Hester* died in 1839, without having established his claim to the share devised to him, and left *Mary Davall* his heirress at law, who conveyed the same and the dividends thereon to the plaintiff. Whereupon this suit was instituted, and a reference had been made to the Master, who reported that the testator, *Richard Harris*, had left no heir.

Swanston and *Faber*, for the plaintiff, cited *Burgess v. Wheate*, 1 Eden, 177, and *Taylor v. Haygarth*, 14 Sim. 8. *Wray* (for the Attorney-General,) on the part of the Crown; *Wigram* and *Allnutt* for the New River Company.

The Vice-Chancellor said, that the case of *Burgess v. Wheate*, cited at bar, was not substantially distinguishable from the present. The share was for all purposes to be considered as real property. A reference would, therefore, be made to inquire who was *John Hester's* heir at law.

April 27.—*In re Emberton Friendly Society*—Order for transfer of funds to four new trustees—One set of costs only to be paid to the trustee who had not opposed the transfer.

—27.—*In re Sheffield and Retford Banking Company*—Order made with consent of all parties to wind up the company under the 11 & 12 Vict. c. 45.

—28.—*Constable v. Bull*—Judgment on construction of will.

—30.—*Harmer v. Gooding*—Demurrer for want of parties allowed—Leave to amend, and costs reserved.

—30.—*Biddulph v. Shrewsbury and Chester Railway Company*—Referred by consent to arbitration.

May 1.—*Piper v. Soyer*—Decree for dissolution of partnership by consent—Reference as to sum to be paid by defendants.

—1.—*Dakin v. London and North-western Railway Company*—Stand over.

—2.—*Esparte Cradington, In re Southall*—Stand over.

—2.—*Esparte Stewart, In re Stewart, Sloper, respondent*—Cur. ad. vult.

Vice-Chancellor Wigram.

Fussell v. Elwin. April 20, 21, 1849.

PRACTICE.—ASSIGNEES OF BANKRUPT.—PARTIES.

Held, that where a party to a suit becomes bankrupt during its progress, a decree will not be granted against the rest, under the 32nd Order of 1841, but the assignees must be made parties by supplemental bill.

THE executors of a testator had committed a breach of trust, by allowing one of their number to have control over a part of the estate, and in consequence, upon the death of such executor insolvent, the trust fund was lost. A bill was therefore filed against the surviving executors, and the administrator of the deceased insolvent executor, and it was prayed that the defendants, or such of them as the Court should decree, might replace the fund.

It appeared that one of the surviving executors had recently become bankrupt, and the *Solicitor-General* and *Batten*, for the plaintiffs, contended, that they were entitled to a decree against the other defendants under the 32nd Order of August, 1841, which orders, "that in all cases in which the plaintiff has a joint or several demand against several persons, either as principals or sureties, it shall not be necessary to bring before the Court, as parties to a suit concerning such demand, all the persons liable thereto; but the plaintiff may proceed against one or more of the persons severally liable;" and citing *Perry v. Knott*, 5 Beav. 293.

Wood and *Gordon* for the defendants.

The Vice-Chancellor said, that the plaintiffs were bound to continue the suit in the form which they had originally elected to take, and they could not, therefore, dismiss the bill against a party who had in the progress of the suit become bankrupt, and take a decree against the others. The cause must stand over in order that the assignees of the bankrupt may be made parties by supplemental bill.

April 26, 27.—*Hepworth v. Heslop*—Motion by executor, the plaintiff in an issue to try the consideration of a bond in which he was obligee, to be examined in support of the bond, refused with costs.

—27.—*Lewis v. Burnis*—Judgment on construction of will.

—28.—*Hutton v. London and South-western*

Railway Company—Company held entitled to costs of suit.

— 26, 27, 28, 30, May 1.—*Reynell v. Sprye, Sprye v. Reynell*—Part heard.

— 30, May 2.—*Adams v. London and Blackwall Railway Company*—Cur. ad. vult.

Queen's Bench.

(Before the Four Judges.)

Brown v. Andrew. Jan. 26, 1849.

LIABILITY OF PROVISIONAL DIRECTOR.—CONTRACT BY PART OF MANAGING COMMITTEE.

Where a provisional committee-man authorised eight persons to act on his behalf as a managing committee, Held, that he was not bound by a contract entered into by a smaller number.

IN an action by a traffic-taker against a member of the provisional committee of a projected railway company, it appeared that the defendant attended a meeting, at which a managing committee, consisting of eight persons, were appointed, with directions to take the most energetic measures for carrying out the project. On the day following this meeting, six of the eight persons so nominated as a managing committee, engaged with the plaintiff to take the traffic. In answer to the action it was contended, that the authority given by the defendant was not pursued. The defendant had authorised a committee consisting of eight persons to contract for him, whilst the contract made with the plaintiff was entered into by six persons only. On the other hand, it was insisted, that a reasonable construction should be put upon the resolution to which the defendant was a party, and that it never could have been contemplated that all the members of the managing committee should be present whenever any contract was entered into. The plaintiff had a verdict, with leave to substitute a verdict for the defendant, if the Court should be of opinion that the concurrence of all the members of the managing committee was necessary to entitle the plaintiff to recover as against the defendant.

A rule was accordingly granted, which was argued by *M. Chambers* and *Bramwell* for the plaintiff; and *Shee, Serjeant*, for the defendant.

Per Curiam. The rule to enter the verdict for the defendant must be made absolute. The defendant has given a special authority to eight persons to act for him, and though it is probable that he understood a smaller number than eight would act in the matter, the Court cannot, in the absence of all evidence upon that point, say that he has given them such authority. It has been said that it must be understood the defendant had authorized a reasonable number of the committee to act for him; the Court, however, cannot fix upon the number which ought to be considered reason-

able, but it was for the plaintiff to have shown that by evidence.

Rule absolute to enter the verdict for defendant.

Reg. v. The Great Western Railway Company.
Feb. 24, 1849.

AUDITOR.—PARTNER OF PARISH SOLICITOR.—COSTS OF IMPROPER LITIGATION.

The circumstance that a district auditor is the partner of the solicitor of a parish situate within the district does not render the audit ipso facto void, although such an appointment is objectionable.

Where charges are incurred in respect of legal proceedings improperly instituted, such charges should not be allowed, because the proceedings have been taken with the sanction and under the authority of the vestry; nor, on the other hand, should they be disallowed merely because the result of the litigation has been unsuccessful.

Acting on the advice of a barrister, although it may prove bona fides, does not afford any justification to parties who engage in improper litigation.

A WRIT of certiorari was sued out at the instance of the Great Western Railway Company, under the 7 & 8 Vict. c. 101, s. 35, for the purpose of bringing the audits of two rates, raised by the parish of Burnham, Bucks, and allowed by Mr. Charsley, the district auditor, under the consideration of this Court. The complaint was, that Mr. Charsley was the partner of Mr. Parton, and that Charsley and Parton were the parish solicitors for the parish of Burnham, and that the former, in his capacity of auditor, had allowed certain charges for certain legal proceedings which were improperly instituted, and which, for that reason, without reference to the amount of the charges, ought to have been disallowed by the auditor. It appeared that two rates, defective for want of the declaration required by the act 6 & 7 W. 4, c. 96, were made for the parish of Burnham, and partially collected, after which friendly appeals were entered against them, under the advice of counsel, and they were quashed by the Court of Quarter Sessions, who ordered two new rates to be substituted, which new rates were appealed against by the Great Western Railway Company, and confirmed on appeal. The orders of Sessions, with respect to the four rates, were removed into this Court by certiorari, but a rule nisi was afterwards obtained to discharge so much of the writ as related to the orders made in regard to the rates which had been quashed, on the ground that the Great Western Railway Company was not a party to the appeal against those rates, and this rule was finally discharged with costs. Mr. Charsley, as auditor, had allowed the charges consequent upon these several proceedings.

Very voluminous affidavits were filed in

support of the rule as well as in opposition to it, upon which the arguments of counsel mainly turned.

M. Chambers, with *Winser*, showed cause against the rule; and *M. Hill* and *Pashley* appeared for the company prosecuting the writ.

The Court, without expressing any approval of the appointment of Mr. Charsley as auditor, declined to adopt the principle contended for by the learned counsel for the prosecutor, that the appointment of an auditor to settle his own account was *ipso facto* void. A parish solicitor would do well to decline accepting such an office, but his appointment with a knowledge of his interest showed a reliance in his integrity, and having accepted the office he could not refuse to discharge any of the duties. It was also due to Mr. Charsley to state, that he appeared anxious to obtain such assistance as would enable him to come to a right decision when discharging his duty as auditor. As to the charges which it was contended were improperly allowed, whilst the Court, on the one hand, could not assent to the proposition that the fact of legal proceedings turning out unsuccessful was a sufficient reason for an auditor refusing to allow them to be paid out of the rates; so, on the other hand, the Court discountenanced the doctrine contended for, that the charges were properly allowed, inasmuch as the parish vestry had directed the several proceedings which occasioned those expenses. If this doctrine prevailed, the result would be that the majority attending a parish vestry might sanction any amount of improper litigation, and burthen absent or dissenting rate-payers with the expense. The rates could not be legally diverted in this way from their original purpose. It was also contended, that the charges were properly allowed because the proceedings were taken under the advice of counsel. But taking the opinion of counsel, at the utmost, only proved that the party acting on it proceeded *bonâ fide*, and the advice of counsel could not justify what was unwarranted by law and what the Court condemned. On the whole, the Court was of opinion, that the items allowed ought not to have been allowed, because they were incurred in respect of a course of litigation which, under the circumstances, must be pronounced improper. As the conduct of the parochial authorities appeared to be free from all evil intention, the Court did not feel itself called upon to order the costs of the prosecution to be paid out of the parish funds; but the auditor must bear his own costs in this case, and should not be reimbursed out of the parish rates. Upon these terms the rule was made absolute.

Doe d. Sayer and others v. Hatton. April 19, 1849.

LORD DENMAN'S ACT. — COMPETENCY OF WITNESSES.—OVERSEERS OF TOWNSHIP.

Held, that the 3 & 4 Vict. c. 26, which ren-

dered competent as witnesses lessors of the plaintiff in ejectment of parish officers, was not repealed by the 6 & 7 Vict. c. 85.

Quære, whether the 59 G. 3, c. 12, s. 17, by which all lands, &c., are vested in the churchwardens and overseers of a parish, extends to officers of townships.

AN action was brought by the churchwardens and overseers of the township of Great Worley, in Staffordshire, to recover possession of some property situated at Chialin Haigh under stat. 59 G. 3, c. 12, s. 17, which enacts that, "in all actions, suits, indictments, and other proceedings, for or in relation to any such buildings, land, or hereditaments, or the rent thereof, or for or in relation to any other buildings, lands, or hereditaments, belonging to such parish, or the rent thereof, and in all actions and proceedings upon or in relation to any bond," &c., "it shall be sufficient to name the churchwardens and overseers of the poor for the time being, describing them as the churchwardens and overseers of the poor of the parish for which they shall act, and naming such parish."

On the trial before *Coltman, J.*, at the Staffordshire Assizes, the jury gave a verdict for the lessors of the plaintiff.

Godeon, Q. C., now moved for a new trial on the ground that the 59 G. 3, c. 12, s. 17, mentioned parishes only, and not townships, and that the lessors of the plaintiff had been improperly admitted as witnesses.

The Court, however, held, that the lessors were competent witnesses under the stat. 3 & 4 Vict. c. 26, which enacted that lessors of the plaintiff in ejectment, if parish officers, were rendered competent, and that the 6 & 7 Vict. c. 85, (Lord Denman's Act,) did not render incompetent persons who were previously competent. The rule would, therefore, be refused upon that ground, but a rule *nisi* must be granted on the other ground.

April 26.—*In re Sutcliffe and Hall, Justices of Bath*—Rule *nisi* on justices to proceed to hear a complaint exhibited for non-payment of a rate made by the lighting, &c. commissioners.

—26.—*Regina v. Justices of Glamorgan-shire*—*Cur. ad. vult.*

—27.—*Ayrton and another v. Abbott and another*—*Cur. ad. vult.*

—28.—*Regina v. Inhabitants of St. Leonard's, Shoreditch*—*Cur. ad. vult.*

—28.—*Doe dem. Stevens v. Stevens*—Rule *nisi* for new trial, on the ground of misdirection and improper admission of evidence.

—30.—*Bullen v. Patrick*—Rule *nisi* for nonsuit refused.

—30.—*Regina v. Keeper of Castle Rushin Gaol, Isle of Man, In re Crawford*—Rule absolute to quash writ of habeas corpus.

—30.—*Regina v. Kendall*—Stand over.

—30.—*Regina v. Charretie*—Stand over.

May 1.—*Sherlock and others v. Spiers*—Cur. ad. vult.

Queen's Bench Practice Court.

Regina v. Featherstonehaugh. April 18, 1849.

CERTIORARI.—INDICTMENT FOR PERJURY.

Certiorari granted upon verifying indictment to remove indictment into this Court, where the proceedings were of such a nature as to require a special jury, and it was alleged they were instituted out of revenge.

THE defendant, who was a gentleman of property residing in Worcestershire, was charged with having committed perjury in some matters arising out of proceedings in Chancery, and an indictment was preferred against him at the prosecution of a person named Winhall. It was alleged by affidavits that the proceedings were instituted out of revenge, and this application was, therefore, made for a *certiorari* to remove the indictment into this Court. It was also alleged that the case required to be tried by a special jury, as it was very complicated.

Whateley in support of the motion.

Coleridge, J., said, that the application would be granted upon the verification of the indictment being produced.

Regina v. Field. April 18, 1849.

CERTIORARI.—INDICTMENT FOR PERJURY.

THIS was also an application for a *certiorari* to remove an indictment of a similar nature into this Court. It appeared that the matter arose out of the same proceedings.

Whateley in support of the application.

Coleridge, J., said, that the writ would issue on the indictment being verified as in the preceding case.

April 26.—*Yates v. Palmer*—Cur. ad. vult.

— 27.—*Regina v. Featherstone*—Rule absolute to admit prisoner committed for horse-stealing to bail.

— 28.—*Regina v. Corporation of Dover*—Mandamus to corporation to make order on the borough treasurer to pay certain sums due from the corporation.

— 28, 30.—*Esparte the Sea Fire and Life Insurance Company*—Mandamus to the Registrar of Joint Stock Companies to receive and register a declaration changing the name of the company from a *company* to a *corporation*.

May 1.—*Baron de Bode v. Reginam*—Rule nisi on the Clerk of the Errors, to allow a writ of error.

— 2.—*Regina v. Newton*—Cur. ad. vult.

— 2.—*Anon*—Rule nisi on attorney to answer matters in affidavit.

— 2.—*In re Hornidge*—Rule nisi discharged with costs, calling on attorney to answer matters in affidavit.

Court of Common Pleas.

Sainter v. Ferguson. April 18, 1849.

SURGEON.—RESTRAINT OF PRACTICE.

A covenant not to practise as surgeon and apothecary within seven miles will be enforced, although the employment of the defendant as an assistant had ceased; and the penalty must be paid as liquidated damages.

THE plaintiff, a surgeon at Macclesfield, had entered into an agreement with the defendant, whereby it was agreed, that in consideration of the plaintiff engaging the defendant as an assistant to him as a surgeon and apothecary, the defendant would not at any time practise in his own name, or in the names of any other persons in Macclesfield, or within seven miles thereof, under a penalty of 500*l.*; and the plaintiff also agreed to engage the defendant as assistant to him as a surgeon and apothecary on the aforesaid terms. An action was brought for a breach of this agreement, and on the trial at the Chester assizes, before Mr. Justice Cresswell, a verdict was found for the plaintiff, damages 500*l.*

An application was now made for a rule nisi to set aside the verdict and enter a nonsuit, or for a new trial, or that judgment should be arrested.

Channell, S. L., in support of the application, contended, that the contract only restrained the defendant from practising during the time the plaintiff actually employed him, and that it was void as in restraint of trade and for want of mutuality: *Mitchel v. Reynolds*,; 1 Smith's Leading Cases, 182, *n.*; and for want of consideration, *Young v. Timmins*, 1 Crompt. & Jer. 331; 1 Tyrwh. 226, and *Pilkington v. Scott*, 15 M. & W. 657.

The Court said, that the agreement was only to take effect upon the engagement being entered into, and the plaintiff thereby authenticated the competency of the defendant as a surgeon and apothecary, which would be an advantage to the defendant, and the Court would not enter into the adequacy of the consideration to the plaintiff that the defendant would not practise within seven miles of Macclesfield. That agreement extended to any future time when the defendant might not be the plaintiff's assistant. If the defendant were not engaged by the plaintiff after this agreement, he was clearly not bound by it. But the declaration averred that he was engaged, and it must be assumed the terms were satisfactory to both parties. It was reasonable that the plaintiff should seek to protect himself from competition, and hence the agreement not to practise. The damages were not a penalty, but liquidated damages agreed upon, as an adequate security to protect the plaintiff from a breach of the contract. The rule would, therefore, be refused.

April 26, 27, 28.—*Duke of Brunswick v. Sloman and others*—Cur. ad. vult.

May 1.—*Woodham v. Newman*—Rule nisi to enter a suggestion to deprive a plaintiff of his costs under the 9 & 10 Vict. c. 95, discharged.

Court of Exchequer.

Tasker (clerk) v. Bulman. Jan. 22, 1849.

LIABILITY OF LESSEE OF TITHES AFTER COMMUTATION.

IN an action of covenant by the plaintiff, vicar of Soham, Cambridgeshire, the declaration stated that the plaintiff demised to the defendant and others, occupiers of land in the said parish, all the tithes payable to him for one year, at a certain rent, payable by instalments, which the defendant and others covenanted to pay at the stipulated periods, and the declaration averred, by way of breach, that one of the instalments remained unpaid. The defendant pleaded in effect, that after the lease was executed the tithes of the parish of Soham were commuted under the act 6 & 7 W. 4, c. 71, by reason whereof the lands in the parish were discharged, and he was deprived of all right to the tithes and all means of recovering the same.

To this plea there was a demurrer, which was argued by *Cowling* in support of the demurrer, and by *Couch* in support of the plea.

Per Curiam. The contention of the defendants is, that the effect of the commutation was to annihilate the tithes, and so to evict them from the demised property, in which event the instalment sued for by the lessor might be legally withheld. Time was taken to consider this point, and the Court is now of opinion that it is not maintainable. Though the tithes might have been, and no doubt were, extinguished by the Tithe Commutation Act, it is clear that something else was substituted for them in the rent-charge. The lease between these parties would not, therefore, be put an end to by the operation of the act; and, as such was not the case, there was no eviction, and the covenants of the lease remaining in full force, the defendants are bound to make good all the rent reserved. There must, therefore, be judgment for the plaintiff.

Haldane v. Beauclerk. April 17, 1849.

TRIAL BY COMMON JURY AFTER STRIKING SPECIAL JURY.—IRREGULARITY.

Where a special jury was struck, but not summoned, and the cause was tried by a common jury, the Court set aside the verdict as irregular.

A RULE was obtained by the defendant for a special jury, and the jury was struck, but not summoned, and in the absence of special jurors the cause was tried by a common jury

and a verdict taken for the plaintiff. A rule was afterwards obtained, on the part of the defendant, to set aside the verdict on the ground of irregularity.

Mr. T. Jones was heard in support of the rule, and Mr. Martin (with whom was Mr. Edwin James) against it.

The Lord Chief Baron said, the Court, after consideration, had come to the conclusion that the rule must be made absolute. Before coming to this conclusion they had consulted the judges of the other Courts, and especially the Chief Justice of the Common Pleas, who had great experience in jury causes, and whose opinion on such subjects was well entitled to the highest consideration. The result of this conversation was, that the Court had come to the conclusion, that where a special jury was struck the cause ought not to be tried by a common jury, unless by consent. These was a case reported in Ryan and Moody, p. 429, which was strongly pressed upon the Court, but the authority of that case was not sufficient to induce the Court to disregard the express language of the statute, 6 Geo. 4, c. 50, which empowered the Court to order special juries to be struck, and directed "that the jury so struck shall be the jury returned for the trial of such issue." Here the jury was so struck and was not returned for the trial of the issue. The trial was therefore irregular, and the verdict must be set aside, and as the rule was moved for irregularity, it must be made absolute with costs.

Rule absolute with costs.

April 26.—*Boosey v. Purday*—Cur. ad. vult.

—26.—*Harrington v. Hodge*—Rule nisi to change venue from Devonshire to London, in order to get a speedy trial.

—27.—*Townsend, executor, v. Deacon*—Judgment for the plaintiff on demurrer.

—30.—*Simons and ux. v. Dunkeley*—Cur. ad. vult.

—30.—*Doe d. Earl of Yarborough v. Newmarch and others*—Judgment for lessor of the plaintiff.

—30.—*Rigby and another v. Great Western Railway Company*—Cur. ad. vult.

May 1.—*Gomme v. Braithwaite*—Part heard.

—2.—*Norris v. Teed*—Judgment for defendant on demurrer to plea.

—2.—*Doe dem. Clift v. Birkhead*—Cur. ad. vult.

Exchequer Chamber.

April 30.—*Regina v. Matthews*—Application dismissed.

—30.—*Regina v. Martin*.—Conviction held bad.

—30.—*Regina v. Harris*.—Cur. ad. vult.

—30.—*Regina v. Illidge*.—Cur. ad. vult.

—30.—*Regina v. Wood*—Conviction held bad.

The Legal Observer,

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SATURDAY, MAY 12, 1849.
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PROPOSED EXTENSION OF THE COUNTY COURTS JURISDICTION.

ITS PROBABLE EFFECTS ON THE PROFESSION.

THERE has been no public intimation from any person in authority to justify the announcement contained in the daily newspapers, that it is proposed to extend the jurisdiction of the County Courts to 50*l.*, and to endow them with an equitable jurisdiction. If a change of such importance were contemplated, it might reasonably be expected that a bill for the purpose would have been before now introduced into parliament.

It must be admitted, however, that the non-production of the bill at an advanced period of the Session, affords no adequate security that such a measure will not be brought forward and precipitately pressed through all its stages at the eleventh hour. The Statute Book, unfortunately, furnishes numerous instances of equally extensive alterations in the laws affecting the administration of justice, which were effected by bills launched in one or other of the legislative chambers at so late a period as the month of July. It is to be hoped, nevertheless, that those entrusted on behalf of the government with the conduct of bills relating to the amendment of the law, will in this instance evince a sufficient deference for the opinion of the profession, and a sufficient regard for the interests of the community, not to force through parliament a measure involving changes of such magnitude, without giving ample time for the consideration of its provisions, and fully informing themselves of the views of those best qualified to judge of its practical operation.

It would be idle as well as premature to
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discuss the details of a measure which we have reason to suppose has not yet been determined upon, but we only express the sentiment of every person with whom we have had an opportunity of communicating, and who has devoted attention to the subject, when we state that the extension of the jurisdiction of the County Courts to 50*l.*—without more—without any alteration in the principles or practice under which justice is now administered in those Courts—would be an unmitigated public evil.

If, indeed, the increase of jurisdiction were accompanied by other alterations in the constitution and system of procedure of the County Courts, and above all by a right of appeal in every case, under proper restrictions, to one of the Superior Courts at Westminster, the matter would assume a very much less exceptionable character. Even in that event, however, the change would be productive of consequences of greater moment and more extensive influence than may be conceived upon a cursory consideration of the question. The civil business at many of the assize towns has scarcely been sufficient to justify the expense and inconvenience of holding two Circuits a year for each county. ~~Reduce~~ the Cause Lists on Circuit, by striking out every action in which the debt or damages sought to be recovered does not exceed 50*l.*, and the number remaining for trial will not afford any adequate inducement for the attendance of an efficient Bar, and the appearance of judges and jurors in the assize town twice a year will soon be found unnecessary, and as such dispensed with.

No doubt, in the course of a few years, an independent Bar would be established in all busy localities in which advocacy is required, the members of which would confine their practice to certain provincial limits, leaving the business of the Courts of Law

at Westminster to be transacted by a distinct Bar. The effect of such an arrangement upon the character of the profession, and the administration of the law, must in a great degree be matter for conjecture, but there are few persons, we believe, so sanguine as to suppose it would elevate the one or improve the other. This, amongst many other obvious consequences, will require to be considered whenever an extension of the County Court jurisdiction is seriously proposed. The Attorney-General has distinctly stated that his intention during the present Session is only to introduce a short explanatory act, for the purpose of removing doubts which have arisen as to the effect of summonses and orders issued by the judge of one district and executed in another. We shall take the earliest opportunity of laying the proposed bill before our readers.

A short but able pamphlet on this subject,* has just been published by a solicitor at Leeds, in which it is observed that—

"No doubt, the expenses of trying an issue at Nisi Prius (which are often enormous, especially when the parties and witnesses reside at a distance from the Assize Town,) and the length of time which elapses between the assizes, during which interval the parties cannot bring the cause to trial, are great evils, which are in a considerable degree remedied by the County Courts, as to causes of action coming within their jurisdiction. There may be a doubt, whether appointing several new judges of the Superior Courts, and holding the assizes more frequently, and at all the principal towns in the kingdom, would not have been a more satisfactory remedy for these evils, as to all causes of action above 5*l.*, than the establishment of the New County Courts; but as these Courts are now established, and as it appears to be the intention of the legislature to uphold them, the best course seems to be, to point out their defects, with a view to having them remedied."

And the writer, amongst other "hints for improvement," thus remarks on the disallowance of the costs of attorneys, and the needless expense of witnesses in undefended cases :—

"It is a rule with some of the judges, that if the defendant on being summoned admits the demand, no fee is to be allowed to the plaintiff's solicitor for his attendance, as against the

defendant. With all deference to the judgment of those learned gentlemen who adopt this rule, it is submitted that it requires reconsideration, because the plaintiff has no means of knowing before he comes into Court whether the defendant will admit or deny the debt, and therefore he must come with evidence to support his claim, for the proper getting up and arranging of which it would seem that he has a perfect right to the services of his solicitor. Nor can he tell that the defendant does not intend to rely upon some matter of law which he himself may not be competent to meet without professional aid.

"As there is no judgment by default in the County Courts, the plaintiff is obliged (unless the defendant will give a consent to judgment) to go down to Court on the day of trial with his witnesses,—must attend there the greater part of the day, unless he has the good fortune to be near the head of the list,—and may find after all that the defendant admits the demand, so that all his own time and the time of his witnesses has been wasted. If a judgment by default were allowed, many causes would be settled long before the day of hearing, and the useless trouble and expense of taking witnesses where the defendant does not intend to deny the claim would generally be avoided. It is suggested, that on the summons to the defendant should be indorsed a notice, that if he intends to defend the action, he must give notice at the office of the Court of his intention so to do, eight days before the day of hearing, and in default of his giving such notice, that the plaintiff will be entitled to judgment by default against him, and to issue execution; and let a notice be indorsed on the note given to the plaintiff at the time of his entering the plaint, that he is to apply at the office eight days before the day of hearing, to ascertain whether notice of defence has been given, and informing him, that if he finds it has not been entered, he will be entitled to judgment by default, and to execution."

The author also animadverts on the general practice of allowing small debts to be paid by *numerous instalments*, and on the want of an *appeal*, to which we have above referred.

"When it is considered that many of the judges of these Courts never before held a similar office,—that out of the whole number, it may well be supposed that there are some incompetent men,—and that many of the judges hear as many as one hundred cases in a single day, it is surely no presumption to suppose that many of their decisions require review. What was one of the greatest grievances in France before the revolution? That there were many independent Courts, each of which differed from the other, there being no uniform administration of law. The evil resulting from having so many independent judicatures might be done away with, by establishing a Court of Appeal which would keep the Inferior Courts in order, and would

* The Defects of the New County Courts, with Hints for their Improvement. By a Country Attorney, a member of the Metropolitan and Provincial Law Association. London: Simpkin & Co. Leeds: J. Y. Knight.

prevent any serious infringements of right, because, a judge knowing that his decisions are liable to be reviewed is far more likely to consider his judgments well, than one who knows, that however monstrous his judgments may be, they will go no further than his own Court, perhaps be railled at by the disappointed suitor, and furnish matter of conversation among the attorneys. And it must be borne in mind, that the County Court judge is an absolute monarch,—the decision on points both of law and fact, in most cases, rests entirely with him,—he has no powerful Bar practising before him,—if an attorney should say anything which is not agreeable to his ears he may refuse to hear him again (s. 91,) and the press rarely records his decisions, so that, if there is no appeal from his judgments, there is no check whatever upon him. There need be new machinery for appeals, let them be made to any of the Superior Courts. It may be objected, that this will add greatly to the labours of the judges of the Courts at Westminster. The writer does not think that this result would follow, he believes that the number of appeals would be exceedingly small. The great value of the Court of Appeal would be in the influence it would exercise over the minds of the County Court judges in preventing *grounds* for appeal rather than in hearing appeals."

In these and other suggestions, for which we refer to the pamphlet, we entirely concur. Some of them might be adopted by the Attorney-General in his intended bill, and the right of advocacy should be given to duly qualified practitioners, and a better scale of costs allowed.

REFORMS IN THE COURT OF CHANCERY.

THE improvements which are contemplated in the Court of Chancery, and to which we have from time to time adverted, are not yet introduced into parliament; but we believe that no unavoidable delay will take place. There are many details to be considered before any important change can be matured. Meanwhile we may notice such suggestions as we receive, and have now to notice the Second Edition of a Pamphlet by Mr. W. Challinor, a solicitor of Leek.* In the present edition numerous well-chosen extracts are given from the evidence before the Select Committee of the House of Commons on Fees, and the author has applied his observations particularly to the defects of the Procedure in the Masters' Offices and the Fee System.

* Published by Stevens and Norton.

On the first, the remedies which he suggests are as follow:—

"1st.—As to References to the Masters; let these be dispensed with as much as possible, and the details of each case, wherever it is practicable, be decided by one and the same Judge. Let the referring Judge, who is already acquainted with the facts of the case, sit at Chambers, and dispose of all possible questions, so that only those matters of account or title, &c., which really require, or are convenient for the intervention of the Master, may be referred to him.

"2nd.—When a reference is made to the Master, let the parties proceed orally before him, if he deems it expedient, or at any rate by affidavit alone, without the prolix antecedent of statement and counter-statement—and let all unnecessary travelling through the Court of Chancery, by means of Bills, Answers, Decrees and Orders, before the cause is submitted to the Master, be got rid of—especially in matters which are referred as of course, and where it is known at the outset, that *the business really begins in the Master's Office*.

"3rd.—Let the proceedings before the Master be continuous, so that as far as possible, one inquiry may be disposed of, before going on to another, and so that the present piecemeal system, by which months are spent in passing an account which might be disposed of in a day or two, may be done away with.

"To effect this, let the Master have a list of causes like any other Judge—and particularly in all matters before him of a judicial nature, let his proceedings be public, as in the Bankruptcy Courts, so that the light of public opinion may operate as well in his Court as in any other, to produce dispatch and equity, and to clear away some of those obstructions that invariably hang about the purlieus of secret inquiry.

"4th.—Let the Master be bound to give in his Report in the most concise manner, and within a fixed period—the Court above having the power to extend this period, under special and necessary circumstances.

"The above regulations alone, would probably render half the number of Masters and Masters' Clerks adequate for the purpose, and would at one stroke, immensely facilitate the business of the Court, and also greatly reduce its general expenditure."

As to the system of Fees, Mr. Challinor advocates the following alterations:—

"1st.—The Salaries of the Judges and superior Officers, should, perhaps, in conformity with Lord Langdale's opinion, be paid out of the Consolidated Fund, as in the case of every other Court of Justice—and the supervision of Government more efficiently secured, as a guarantee against extravagance and over payment.

"All the various Officers of the Court should be paid by Salary and not by Fees—the principle of vested interest and compensa-

tion be discountenanced as far as possible, rendering continuance in office more dependent on good behaviour—and the general understanding on fresh appointments should be, that those newly appointed should be allowed to rise by good conduct in the various departments, from the inferior grades to those of better emolument.

"Experience has, I think, fully proved, that where there is not the element of *competition*, the system of payment by Fees fails to secure the only advantage supposed to appertain to it, viz.: increased punctuality and exertion—while on the other hand it has been found to lead in many instances to extortion and abuse.

"2nd.—The present system of payment by Copy Money should be discontinued, and every means adopted to prevent prolixity of pleading and multiplication of copies, which of late years more particularly, has become so intolerable a burden.

"3rd.—Those Offices also, such as the Report Office, Subpœna Office, Affidavit Office, and that of Clerk of Accounts, which are now become useless, or nearly so, should be abolished, at least as separate establishments."

With many of these suggestions we heartily agree, and we have already made our readers acquainted with the intention of the authorities to abolish compulsory copies of papers in the Masters' Offices, and enable the Solicitors to supply each other with such as may be requisite. A multitude of small fees are to be abolished; but we fear we must still wait some time before full justice will be obtained by throwing the Salaries of the Judges and officers on the Consolidated Fund.

THE BANKRUPT LAW CONSOLIDATION BILL.

AMENDMENTS PROPOSED BY PROVINCIAL LAW SOCIETIES.

THE discussion of this bill, as amended in the Select Committee, has been appointed for Monday next, the 14th instant, in a Committee of the whole House. We, therefore, proceed to lay before our readers the principal suggestions which have been made by several provincial Law Societies, and we think their views ought to receive particular attention. The Societies to which we refer are the Manchester, Newcastle-upon-Tyne, and Wolverhampton, and the practitioners in those large and important places are evidently well fitted to judge of the proposed alterations in the Law, and to make useful suggestions.

The following are from the *Manchester Law Association*:

As to the Court and its Officers.

"The Court is usually so far distant, that

for a large proportion of the cases that require its aid, there is no Court available, and its proceedings are so ruinously expensive that its help, when obtained, is often fatal to the object it was meant to serve. For this the bill provides no remedy, nor is there any, except by a change so sweeping as to amount to an abolition of the whole system. There is, however, a means of lessening these evils to a certain extent, and to that means we beg to call your attention. There are seven Courts in the kingdom (besides those in London,) and each of these Courts, except two, has two Commissioners and a double set of officers. We are of opinion that one Commissioner and one set of officers is quite enough for the business of one Court, and consequently one-half, or nearly so, of the expense of the Courts might be saved by reducing the number of Commissioners and officers. If it should be supposed, however, that there is too much business to allow of this reduction, at all events much inconvenience and expense to the public might be saved by increasing the number of Courts from seven to twelve, and so lessening the extent of the districts, one Commissioner and one set of officers being appointed to each Court.

"*The Office of Official Assignee*, in which the proposed bill makes no change, appears to us, in its present form, to be most objectionable. The actual business performed by the Official Assignee is the having custody of the funds of the estate, receiving money, making payments, and keeping the accounts. There is no question that an officer to perform these duties is a great convenience, but the question is, whether this officer ought to be an *assignee* of the bankrupt's estate.

"The assignees are persons in whom the whole property of the bankrupt is vested, upon trust, to wind up the estate and ultimately divide the whole amongst the creditors. For this purpose, one or more persons are chosen, who, from their knowledge of the bankrupt, his business, his connexions, his mode of trading, and so on, will be most likely to perceive the truth or detect the falsehood of the bankrupt's statements and accounts, and will be able to judge and determine correctly on all the numberless points of dispute that arise, with all sorts of persons, in winding up a bankrupt's estate. For all such purposes an Official Assignee has no qualification; he knows nothing of the bankrupt, his business, or his connexion; as the assignee of numberless estates, he cannot be the accountant to investigate the bankrupt's accounts in each particular estate, nor can he watch and direct the proceedings in detail. All that the Official Assignee can properly do—all, in fact, that he usually does, is to act as treasurer to the estate, and, for the rest, to permit his name to be used as assignee when the other assignees think proper so to use it.

"We have sought to establish that, as a treasurer to the estate, the Official Assignee is a useful officer; that as an assignee he is use-

less. Upon this our suggestion follows: that the office should be changed to that of *Treasurer to the Estate*, and that he should cease to be an assignee, or in any way a party in the case or proceeding before the Court.

"*The Messenger's office* is one universally objected to. His duties are merely those of a bailiff; the chief and indispensable requirements of the office are the greatest energy, activity, and trustworthiness; the latter may be found, but the two former never can, in a man who has an absolute monopoly of the business he is employed in. In practice it often happens that promptitude, energy, even daring and personal courage, are vitally important to the interests of the creditors. This you may obtain if permitted to select a man who knows that future employment depends upon present conduct; but if you are obliged to choose a man who is the messenger in all bankruptcies, and has to divide his attention between them; who has his own peculiar times, habits, and manner of transacting the business of his office, which he need not disturb merely to gratify your wishes; if you are compelled thus to confide your business to a man who is necessarily indifferent to it, there is but a slight chance indeed of your obtaining that extraordinary assistance to render which is the chief use of a messenger.

"In every bankruptcy there is a messenger's bill to pay, even though the whole estate may have been realised before the bankruptcy, and the proceeds paid to the Official Assignee upon opening the proceedings, or *though there be no estate at all*, and, in the latter case, the messenger demands 5*l.* in advance, in order that he may be sure to be paid in the event of there being nothing for him to do! The Committee suggest that this office should be abolished, and that the appointment of messenger should be restored to what it was before the passing of the 5 & 6 Vict. c. 122, that is to say, that the parties interested in the estate should name the messenger, subject to the approbation of the Commissioner."

The Committee next recommend, that all persons, whether traders or not, should be made liable to the Bankrupt Laws. We do not enter into the discussion of this proposal, because it is clear the Legislature will not adopt it.

The Expense of the Fiat.

We entirely concur with the Committee, in their recommendation of the expense of the fiat and the proceedings being defrayed by a per centage on the dividends.

Certificate and Offences.

We have in former articles animadverted on the large and objectionable powers proposed to be given to the Commissioners in regard to the punishment of bankrupts for offences against the Bankrupt Laws. We concur in the following suggestions, except that we do not see why it should be limited

to misconduct "after the date of the bankruptcy."

"1st—That a certificate of conformity should be granted to every bankrupt who shall actually conform to the Bankrupt Laws; subject to a power in the Commissioner to suspend the certificate, upon the ground of misconduct *after the date of the bankruptcy*. Such certificate to be a complete discharge to the Bankrupt in all cases.

"2nd—That the Commissioner shall have power to hold to bail, or commit for trial, any bankrupt who shall appear to him to have committed an offence punishable by the Statute. The committal to be to the Assizes or to the Sessions, according as the Commissioner may think best in each case. That on the trial of such cases the production of the proceedings shall be sufficient evidence of the bankruptcy, and all matters purporting to appear upon such proceedings."

The Bankrupt's Accounts.

Objections have before been made to the proposition of an accountant being appointed by the Court, to assist in making out the bankrupt's accounts. The Committee justly observe, that—

"It happens in at least nine cases out of ten the Bankrupt is obliged to employ an accountant to make out his accounts and balance sheet, and it is a matter perfectly well understood, that in a great proportion of cases the bankrupt retains enough of his estate to pay this expense.

"Now we are of opinion that it would be much better that such expense should always be paid out of the estate, the amount to be ascertained by the taxing officer, subject to a power in the Court to refuse the payment if the person should appear not to have done his work with proper care and ability.

"To make the allowance only on the application of the assignees is clearly wrong, as such assistance is most wanted in those cases where the assignees are not opposed to the bankrupt, and therefore where they are most likely not to make the application. It is also clearly wrong not to leave the bankrupt to appoint his own accountant, he alone is responsible for the accounts, and he is liable to be punished if they are not true. How could any Court punish a man for false accounts, when these accounts were prepared by a person appointed by others, and against his will? Besides, we object to all powers of appointment, or otherwise, in the Court, which extend its means of patronage over persons in any way practising before it."

Fraudulent Preferences.

Next we come to the Report of the *Wolverhampton Law Society*, from which we shall select several important remarks on the clauses which are designed to prevent fraudulent preferences, but which in

the opinion of the Committee proceed much too far. They state the purport of the Clauses or "Articles" 108, 109, 115, 184, 185, and observe that—

"The object of these clauses is, ostensibly, to prevent any simple creditor, or several creditors only, of a trader, being placed in a situation to acquire payment in full, or in a great part, of his or their debts, leaving to the general body of creditors little or no property for division amongst them.

"It may in the first place be a question whether it is desirable or just, thus in effect to abolish, in one of the most important branches of affairs, a doctrine which has always been favourably recognized by Courts of Law and Equity—that of *vigilance*,—and to place the active and the supine creditor on the same footing.

"And secondly, the more material question occurs, whether the evils which the specified articles seek to remedy, may not, by the operation of such articles, be replaced by evils of a greater magnitude. It might possibly be found that these articles would not merely incite caution and restrain undue credit, but that they might tend to destroy credit, and thus fetter commercial enterprise. And this point acquires greater significance at the present moment, by reason of the expectation entertained by many, that in consequence of the repeal of the Corn Laws the reliance of this country for a continuance of its greatness must be more and more on its commercial resources. It may not unreasonably be presumed that Articles 108 and 109 would in a measure prevent the raising of money on personal property to be left in the debtor's possession, and that Articles 115, 184 and 185, would have the effect of materially curtailing credit, and of preventing the timely aid to traders which might enable them to retrieve slight or even serious difficulties. The direct operation of these articles might not improbably be to consign many present traders to the Gazette, and thus injure even general bodies of creditors in an attempt to serve them. It can scarcely be supposed that a party would lend money or give credit to a trader on conveyance or equitable mortgage to be given for securing an antecedent debt and the required advance, without very strict inquiries, whether the trader were able to meet his engagements. Meantime, the withholding of the loan or credit might be fatal, as the exigencies of trade frequently require instant promptitude. It is useless to insist, that on the first loan a security or an agreement for it should be taken. Even if security were available, yet in practical and busy mercantile life, a lender or creditor cannot always have his legal adviser at his elbow, or interpose excessive caution and consequent delay in his dealings. Another direct operation of these Articles would probably be to create the accumulation of capital in few hands, and thus favour monopoly; for however industrious and capable a man of

small pecuniary means might be, he would probably find it difficult, if not impossible, to borrow capital or obtain credit, and consequently he would be excluded from commercial undertakings and enterprise.

"That frauds and unfair preferences are now committed, cannot be denied; but it might be contended that, however numerous, they form the exceptions and not the rule, and that they might be left for their cure, to public opinion and to the present remedies, amongst which may be named the powers of the Commissioners to withhold, or to annex conditions on the granting of certificates of conformity. Cases of fraud and unfair preferences may have come within the experience of almost every attorney, but they bear no proportion in number to the instances within his knowledge of the beneficial results to traders of those pecuniary helps which the enactments of the Articles in question would probably tend to withhold. The fact is, that here, as in regard to any other branch of human affairs, any bad effects of the system are invested with prominence, and deemed objects for constant legislation, whilst the beneficial effects either pass unrecognized, or are not received as counterbalancing advantages. The reflections rarely arise that every system must necessarily have imperfections, and that in an attempt to remedy a prejudicial incident of any given system, the whole structure may be jeopardised.

We proceed now to the suggestions of the *Newcastle-upon-Tyne Law Society*. Many valuable hints have been given by the Committee for the amendment of numerous clauses in the bill, and which will, no doubt, be duly considered, and for the most part proposed by the member to whom the suggestions are entrusted; but our present object, and the limits to which we are confined, enable us only to advert to the following:—

"Article 109.—This clause, if allowed to stand as it is, will operate most injuriously. The case may be put of a father wishing to make a settlement of furniture on the marriage of his daughter, or of a trader retiring from business disposing of his stock to a junior partner or foreman, who cannot immediately pay, and desirous of retaining a lien on the property. Such transactions would be precluded by the operation of this clause. Would not every useful purpose be answered by a local registry? Transfers of shipping are protected in this way, and there can be no reason why the principle should not be extended to all other descriptions of personal property.

"Article 115.—The seizure under an execution ought not of itself to be an act of bankruptcy; cases may easily be supposed in which such a law would operate with the greatest and most unreasonable severity. It would surely suffice if the proceeds of the execution were made recoverable as provided by this clause, in

the event of adjudication on an independent act of bankruptcy on a petition issued within a month from the levy.

"Article 126.—A person summoned ought to be allowed to depose to a good defence by affidavit, instead of his personal appearance being required. An admission of debt may be made out of Court, why not a denial? Is it not absurd that if any person chooses to make an affidavit against all the members of a banking firm at Southampton, for some imaginary claim, they must all attend in London to make a deposition or be deemed to have committed an act of bankruptcy.

"The provision enabling the Court to require the grounds of defence to be stated, is highly objectionable, but it is undoubtedly desirable that there should be an affidavit that there is a good defence upon the merits. Quære, if the solicitor should not make or join in the affidavit.

"Article 169.—Greater facilities should be afforded in obtaining summonses for witnesses. Why should they not issue a blank, authenticated by the signature of the Commissioner, and the Seal of the Court, like subpoenas, to be filled up with the name of the parties summoned at the discretion and peril of the solicitor?"

DECISIONS ON THE JOINT-STOCK COMPANIES' WINDING-UP ACT.

THE observations suggested in this publication shortly after the act 11 & 12 Vict. c. 45, obtained the Royal Assent, as to the extent of its operation, the importance of its enactments, and the number and novelty of the questions necessarily arising under it, have been more than justified by what has already taken place.* The measure has effected a greater change in the administration of justice than any act of the present parliament, and promises to open a field of litigation, the boundaries of which remain to be ascertained. As may be supposed, the consideration its provisions have hitherto received in the Courts has been hasty and partial. The points discussed have been suggested by difficulties presenting themselves, as it were, at the threshold, and afford a very inadequate notion of the complexity and importance of the questions which may arise when the machinery created by the act is brought into full operation. The experiment has yet been tried on a comparatively small scale, and the experience the profession have had of its working, in the cases where it has been tried, is not sufficient to enable any one to predicate confidently, whether it will or will not realise the expectations of those by whom it was framed.

The decisions which have already taken place upon the provisions of the act, however, have been, in more than one sense, important. They indicate the nature and character of the questions which may hereafter arise upon the construction of the act, and afford the only safe guide to practitioners who either voluntarily or compulsorily proceed under its provisions. We make no apology, therefore, for recalling the attention of our readers to the cases which have recently come under the consideration of the Courts.

The case, perhaps, of most importance, as yet decided under the act, is the reversal of the decision of Vice-Chancellor Knight Bruce by the Lord Chancellor, in the matter of *The London and Manchester Direct Independent Railway Company, ex parte Barber*.^b In that case Mr. Barber, a large shareholder, presented a petition for the dissolution and winding-up of the company, under the 11 & 12 Vict. c. 45, and Vice-Chancellor Knight Bruce dismissed the petition with costs, upon the ground, that abortive railway projects, though provisionally registered under the 7 & 8 Vict. c. 110, were not within the terms of the Winding-up Act. There had previously been several orders made by consent to wind-up railway projects, but this was the first contested case. On the part of the petitioners, it was contended that the company was a commercial and trading company, and therefore fell within the scope of the provisions of the Winding-up Act. On the other hand, it was submitted, that the company was not necessarily a trading company, and that to render the members liable under the Winding-up Act, they must have associated for a purpose which would render them traders within the meaning of the Bankrupt Laws. Lord Cottenham, upon appeal, came to the conclusion, that the company in question was a company associated for commercial and trading purposes and for purposes of profit, within the Joint-Stock Companies' Registration Act, (7 & 8 Vict. c. 110,) within the first Act for Winding-up the Affairs of Joint-Stock Companies unable to meet their Pecuniary Engagements, (7 & 8 Vict. c. 111,) and also within the operation of the Winding-up Act of last Session. He therefore directed the order of the Vice-Chancellor, dismissing the petition, to be discharged. This decision, it appears, has been appealed from to the House of Lords, and

* *Vide Leg. Obs.*, v. 36, p. 357.

^b Reported 37 *Leg. Obs.* p. 492.

the Lord Chancellor was asked to stay the operation of his order until the decision of the Court of final appeal could be obtained, which he peremptorily refused, observing that he might as well be asked to repeal the act of parliament. As the matter now stands, therefore, and unless the House of Lords should put a different construction upon the act from the Lord Chancellor, it must be assumed that abortive railway companies are within the provisions of the Winding-up Act.

The case upon the constructions of the Winding-up Act next in importance to that of the Manchester Independent Direct Railway Company, appears to us to be that of *Ex parte Wyld, in re the Wheel Lovell Mining Company*.^c In that case Mr. Wyld, an individual shareholder in the company, was called upon by the suit of a hostile creditor, to pay more than his proportion of the liabilities of the company, and presented a petition for a reference to the Master to take the accounts with a view to a dissolution of the company. Vice-Chancellor Knight Bruce in the first instance made the order; but the Lord Chancellor, upon appeal, intimated his opinion, that the act 11 & 12 Vict. was not intended to comprehend mining companies formed on the "cost book" principle, or indeed any mining companies which were in existence before the passing of the act. Supposing, however, that the company was within the meaning of the act, his Lordship thought, there was an unlimited discretion given to the Court, in applying its provisions, and in the exercise of this discretion he did not think a case had been made out for relief. The purpose of the act was to deal not with solvent but with insolvent companies. Here it appeared there was a quarrel between one individual shareholder and the company, but there was nothing contained in the petition to show that the members of the company were insolvent or incapable of working the mine in the same manner they had done before the difference with the petitioner arose. Upon these grounds, therefore, his Lordship was of opinion, that the petitioner had no equitable claim to the interference of the Court, and the petition was therefore dismissed. The case of *Ex parte Spackman, In re the Agricultural Insurance Company* (reported, pp. 255 and 511, vol. 37,) appears to have been decided on the same principle as *Ex parte Wyld*. Since this judgment was pronounced, it has

been doubted, whether the Lord Chancellor meant to decide that a mining company, clearly insolvent and established before the passing of the act, whether conducted on the "cost book" principle or otherwise, was not within the operation of the act, and we have reason to think there are some cases, now depending before his Lordship, in which this question is raised.

The decision ranking next to the judgment of the Chancellor in the cases already adverted to, is the rule laid down by the Court of Exchequer in the case of *Thompson v. The Universal Salvage Company*.^d Here it appeared, that an official manager had been appointed under the 11 & 12 Vict. c. 45, and the Court refused to issue a *scire facias* against a member of the company at the instance of a judgment creditor, inasmuch as it did not appear that the applicant had proved his debt before the Master under the 73rd section, and had endeavoured to obtain judgment by the means there pointed out. The Court would not presume that due diligence had been used until the means pointed out by the Winding-up Act were put in force and proved unavailing. The effect of this decision seems to be, that a creditor of a company, placed under the provisions of the Winding-up Act, is restricted to the remedies given by that act, and his remedy at law suspended until he can show that those remedies are exhausted.

The other cases decided upon the act are of less importance. In a case of *Ex parte Glaholme, in re the North of England Banking Company*,^e when it appeared that Thomas Glaholme was placed in the list of shareholders as a contributory to the company in the character of a representative of a deceased brother, and he proved before the Master that he was not the representative of his brother, but admitted that he received the dividends that accrued since his brother's death, on shares held by his brother in the bank, and the Master thereupon placed Thomas Glaholme upon the list of persons primarily liable; the Lord Chancellor, concurring with Vice-Chancellor Knight Bruce, sent the matter back to the Master to be reviewed, observing that it was contrary to the express provisions of the act, when Thomas Glaholme was summoned to appear, and did appear in one

^d 37 Leg. Obs. p. 360.

^e Reported 37 Leg. Obs. p. 293. See also *Ex parte Armstrong, In re the North of England Banking Company*, 37 Leg. Obs. p. 377, and *Ex parte Angus*, 37 L. O. p. 319.

^c See Recent Decisions, 37 Leg. Obs. pp. 213, 292.

character, arbitrarily to dispense with a new notice, and charge him in a character totally different from that in which he was summoned to appear. The decision of the Master in this case was therefore in effect reversed.

In another case of *Ex parte Fenwick*,^f in the matter of the same banking company, it appeared that Richard Fenwick made a purchase of 195 shares of the company as investments for his children, and John Fenwick consented to act as trustee for the children during their minority, being indemnified by Richard Fenwick against all calls, &c. John Fenwick's name was alone registered in the books of the company as a shareholder, and under these circumstances Vice-Chancellor Knight Bruce concurred with the Master, that the name of Richard Fenwick ought not to be inserted in the list of contributories to the company. On the other hand, where a father purchased shares in a company for his son, misrepresenting the son to be of age, and afterwards executed an indemnity deed on behalf of his son, it was held by the Lord Chancellor that the father was liable as a contributory.^g

Whatever has occurred in the office of the Masters, very few points of practice have yet been brought under the notice of the Courts, as arising upon the operation of the act; but it is not to be supposed that questions of so much novelty, may not produce many practical difficulties requiring the interference of the Courts.

CHARITABLE TRUSTS BILL.

THE Solicitor-General's Bill for Facilitating and better Securing the due Administration of Charitable Trusts, has just been printed. It is a very different measure from former ones, which sought to place the control and management of charities in the hands of a Board of Commissioners with their assistants, secretaries, &c.

Charities above 30*l.*, and not exceeding 100*l.*, are to be placed in a summary form under the jurisdiction of a Master in Chancery, and under 30*l.* to be referred to the Judges of the County Courts. We can only at present give the substance of the bill, which is as follows:

A petition may be presented to the Lord

Chancellor or Master of the Rolls, where the income of a charity exceeds 30*l.* and does not exceed 100*l.*; and the Master is to proceed on petition; and his orders to be valid without confirmation, and to be enforced like orders of Court.

The Master may make special reports or orders, subject to confirmation; and may order advertisements, &c.; states of facts may be dispensed with, and the Master may regulate the proceedings; and he is to have usual powers vested in him according to the practice in other cases.

The Judges of County Courts are to have jurisdiction in cases of charities, the incomes of which do not exceed 30*l.*; but the Judge is not to settle the charity scheme without previous notice by advertisement, and may direct notices in other cases.

But the Judge is not to proceed on application after notice given in certain cases to have the matter determined by a Master in Chancery, and the order of the Judge may be appealed from on notice within seven days, or by leave within a month, and the petition of appeal to be presented in three months. Power to the Court of Chancery in cases, not within the local jurisdiction to order what Judge shall have jurisdiction; and in cases of charities, the incomes of which do not exceed 30*l.*, and not subject to the jurisdiction of a Judge of a County Court, a petition may be presented to Lord Chancellor, &c.

The Court of Chancery may refer to a Judge of the County Court any matters which may be referred to a Master; but the Judge is not to try titles, &c., but may direct suits, &c., for that purpose. In cases of charities for religious purposes, the trustees to be of the same religion. Land holden upon trust for a charity subject to the jurisdiction of the Court of Chancery and of a Judge may be vested in the treasurer of the County Court, but the treasurer to be a bare trustee; and a memoranda of the vesting order may be endorsed on the title-deeds; and the Judge may order trustees, &c., holding stock, &c., belonging to a charity subject to his jurisdiction to transfer the same to the treasurer.

The Judge may also upon application of persons holding charity monies, order the payment thereof to the treasurer.

The Judge may direct the investment of charity monies.

The costs of proceedings are to be under the discretion of the Master or Judge.

The Lord Chancellor may make orders for regulating proceedings of Courts under this act.

But the act is not to extend to religious or charitable institutions supported by voluntary contributions.

The legal estate of hereditaments now vested in municipal corporations on charitable trusts, but not considered to be vested in trustees, under 5 & 6 Wm. 4, c. 76, without any conveyance.

^f Reported p. 511, ante, vol. 37.

^g *Ex parte Newoley, in re the North of England Banking Company*, vol. 27, p. 253.

DEFECTIVE POWERS OF LEASING BILL.

THE Solicitor-General, on the 2nd instant, introduced a Bill for the purpose of Granting Relief against Defects in Leases made under Powers of Leasing, in certain Cases. The statement in the preamble explains the object in view :—

Through mistake or inadvertence on the part of persons exercising or intending to exercise powers of leasing, and ignorance on the part of lessees of the titles of persons from whom leases under such powers are accepted, leases granted by persons having valid powers of leasing are frequently invalid as against the successors in estate of such persons by reason of some deviation from the terms of such powers, or the non-observance or omission of some condition or restriction under which only such powers could lawfully be exercised; and leases granted in the intended exercise of such powers are sometime invalid as against the successors in estate of the persons granting the same by reason that at the time of granting the same the person granting the lease could not lawfully exercise such power, although at a subsequent time, and during the continuance of his estate in the lands, tenements, or hereditaments to which such power of leasing was annexed or incident, he might have granted such lease in the lawful exercise of such power.

It is therefore proposed to enact, "That where in the exercise or intended exercise of any such power of leasing, whether derived under an act of parliament or under any instrument lawfully creating such power, a lease has been or shall hereafter be granted, which lease is invalid, either as against the person granting the same, or as against the person entitled to the reversion expectant on the determination of such lease, or other the person who, but for the granting thereof, would have been entitled to the possession of the lands, tenements, or hereditaments comprised in such lease, by reason of some deviation from the terms of such power or the non-observance or omission of some condition or restriction under which only such power could lawfully be exercised or otherwise, every such lease, in case the same shall have been entered into *bona fide*, and signed by the several parties thereto, and in case the lessee named therein, his executors, administrators, or assigns, shall have entered thereunder, and paid rent in respect thereof, shall be considered in equity as a contract for such a lease as was purported and intended to be granted in the exercise of such power, so far as the same might have been lawfully granted under such power; and all the persons who would have been bound by such lease if lawfully granted shall be bound by such contract in the same manner in all respects as if the same had been a contract duly entered into for granting the lease so intended to be made, and the act of parliament or instrument creating such power had authorized the making of such contract: Provided that no lessee

under any such lease as aforesaid, his heirs, executors, administrators, or assigns, shall be entitled by virtue of any such equitable contract as aforesaid to obtain any variation of his lease, where the persons who would have been bound by such contract are willing to confirm such lease without variation.

The acceptance of rent to be deemed a confirmation; and leases invalid at the granting thereof may become valid if the grantor continue in the ownership until the time when he might lawfully grant such a lease.

But saving the rights of the lessees under covenants for title and for quiet enjoyment, and the lessor's right of re-entry for breach of covenant, &c. And suits pending not to be prejudiced.

MR. AGLIONBY'S COPYHOLD BILL.

To the Editor of the Legal Observer.

SIR,—I am glad that R. R. approves of the Copyhold Bill now before Parliament. The title of it ought certainly to be altered, for it does not give the tenant any further power to compel an enfranchisement than he has now: it should be intitled "A Bill to effect the Compulsory Commutation of certain Manorial Rights in Lands of Copyhold and Customary Tenure, and for further Facilitating the Enfranchisement of such Lands." All copyhold lands, the manorial rights in which shall be commuted for a fixed sum by virtue of this bill, will, I think, be better than freehold, inasmuch as the title to them will be more simple and safe, and the expense of their transfer, in most instances, much less; but I think no document relating to any copyhold land should have any effect, unless entered on the Rolls; and I do not see why the lord, as well as the tenant, should not have the power to compel a commutation under the bill on his paying the expenses of the proceedings.

A. N.

METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

ANNUAL REPORT OF THE COMMITTEE OF MANAGEMENT.

THE Report of the Committee of Management made to the General Meeting of the Members on the 18th April, is an important document in the history of this Association. It details the various steps taken during the past year for carrying the objects of the Association into effect. It states the grounds on which the Association was formed, and sets forth the exertions which have been made in various parts of the country for extending its utility. It treats very fully of the several Bills before Parliament affecting the Profession and the

Administration of Justice, and describes the several measures which the Committee have deemed it expedient to prepare for the Amendment of the Law. It also states the future plans of the Committee for effecting the purposes of the Association, increasing the number of its members, and promoting the interests of their branch of the profession.

We have always thought that the Association, if it realizes the objects of its founders, is calculated to render great service—1st, by affording the means of uniting the town and country practitioners at a moderate expense into one body; and 2ndly, by combining various operations both in regard to the *Parliament* and the *Press*, in a more unfettered and extensive manner than could probably be exercised by any other society. The union of the great body of attorneys and solicitors throughout the kingdom is evidently the first great step to be attained. If the majority of them were enrolled as members in some of the various Law Societies in town and country, there is scarcely any right and just object which might not be speedily effected. By their own personal influence, aided by the press, the grievances under which the profession labours, would soon be redressed.

One good effect of great importance, has already resulted from the association of the town and country solicitors. It has convinced our brethren in the country that there is no exclusive and selfish feeling entertained by the London solicitors, but that they are willing to co-operate for the general advantage of the whole profession.

We are able only in the present number to give part of the Report.

Progress of the Association.

At the date of the preceding Annual Report, although the Association had then existed for more than twelve months, it was still in an imperfect state. It was without permanent offices, and entirely dependent on the voluntary exertions of its Members, and the gratuitous services of its honorary secretary, for the transaction of even its ordinary and routine business. During the year that has since elapsed, the Association has been completely organized, and it is now in active and regular operation; and the Committee proceed to lay before the Members a sketch of their proceedings since the last General Meeting, together with their views of the present position and prospects of the Association, in its character of a public organ of their branch of the Legal Profession.

The first duty of the Committee was to carry out the instructions contained in the Resolu-

tions of the General Meeting, for the appointment of a permanent secretary to the Association; and they accordingly advertised for a secretary, in the "*Times*," "*Legal Observer*," "*Jurist*," and "*Law Times*." Fifty-four gentlemen sent in testimonials, and applied for the appointment. Of these, twenty-one were seen by a Sub-Committee, who selected four, and referred them, as eligible, to the General Committee; by whom, on the 19th May, Mr. Wm. Shaen, M.A., Fellow of University College, London, and an admitted solicitor, was unanimously appointed.

The Committee then engaged offices, at No. 10, Lincoln's Inn Fields, where the business of the Association has been since carried on.

The Committee, in accordance also with the instructions for that purpose of the General Meeting, resolved to present to Mr. R. Maugham, their late honorary secretary, a piece of plate of the value of fifty guineas, and one hundred guineas in money; and, in order to mark still further their sense of the obligation which the Association is under to that gentleman, both for his exertions in its establishment, and for the uniformly obliging manner in which those exertions were bestowed, the Committee resolved that this testimonial should be presented at the present General Meeting of the Association. Its presentation, accordingly, will form a portion of the business of this day.

In the course of their operations during the past year, the Committee have felt the necessity of being provided with a more thoroughly-defined statement of the objects of the Association (together with a code of rules for carrying it on), than is indicated in the resolutions of the former General Meetings. Guided by the experience they have now had, they have prepared a set of rules, which they have endeavoured to make as simple and comprehensive as possible, and which they have appended to this Report, for adoption or modification by the Members.

With the view of extending a knowledge of the Association, and awakening an increased interest in its support, the Committee, in the course of last summer, issued a short prospectus, or statement of its nature, objects, and mode of operation, containing an appeal to attorneys and solicitors, to come forward and make the Association a real index of their numbers and respectability. This prospectus has been extensively circulated both in town and in the country; but the Committee have seen with more regret than surprise, that considerable hesitation is felt by many of their professional brethren, in taking advantage of this opportunity of uniting together for the purpose of maintaining that high standing and powerful influence, to which, from their number and general character, as well as from the extensive, important, and responsible nature of the functions discharged by them in the community, they are undoubtedly entitled. The Committee attribute this apathy, principally, to two causes:—first, the isolated position, and course of business, of a large portion of the provinces,

together with the fact that the very nature of their daily avocations necessarily has the effect of frequently placing every member of the profession in an antagonistic position with those of his fellow-members, with whom he is brought into contact; and, secondly, the comparatively little benefit that has resulted from the local and partial efforts at union hitherto attempted. If there could be any danger of the profession becoming a powerful and compact caste, over-riding and oppressing the rest of the community, the first peculiarity in the nature of their business might be regarded as a benefit to society in general, and, as such, quietly acquiesced in, however evident might be its unfavourable effect upon the attorneys and solicitors themselves; but it must be evident to all who pay attention to the gradual modifications which are ever taking place in our social system, that such a contingency is absolutely impossible, and that every great public power will in future be controlled and regulated, for the general benefit, by an ever-present public opinion, which is powerful in proportion to its enlightenment and justice, and which may be, at any time, should it become necessary, enforced by the authority of Parliament; an authority which, in fact, has been, and still continues to be, exercised in the regulation of the legal profession, to a degree which has never taken place with regard to any other lawful and honourable calling.

Necessity for the Association.

The more frequently men are brought to act together and in the view of the public, the higher will be the tone and standard of their daily business-conduct; and it is especially true with regard to the legal profession, that whatever danger may exist of its members obtaining undue power, or of their abusing it when obtained, lies in the tendency, which characterises their business, to secret and isolated action, irresponsible to the general high professional feeling, and known only to individual clients, who must always be comparatively incompetent supervisors, because, on the one hand, they are not in the profession, and on the other, they are interested parties. To modify this tendency, so far as it can be usefully modified, is one great object of this Association. So far as it can be usefully modified, for, of course, a large proportion of the business entrusted to Attorneys must always be strictly confidential; and wherever confidence is reposed, confidence may be abused; a consideration which further shows the deep interest which the public should feel in everything that tends to raise the character and standing of that class from whom they must select, in numerous cases of vital importance, their confidential agents.

Upon every ground, therefore, of public utility, as well as of professional advantage, to enable Attorneys and Solicitors to vindicate their claims to a high and honourable standing in the community, and to defend themselves from dangers, both from within and without their own body, the Committee deem it essential

that the profession should, by uniting, obtain a common as well as an individual opinion and voice. Ought they then to be discouraged at the comparatively little success which has attended previous efforts? The Committee think not, and for the following reasons:—No effort has been previously made which was really calculated to meet the wants of the profession. The various Provincial Societies have effected, and are effecting, much good; but without some central union they are only calculated to produce a partial effect. United in operation, as they are becoming at present, with the Metropolitan Office, they gain an increased power to effect their local objects, while, at the same time, they become valuable auxiliaries in promoting any action of the whole profession. With a view to the interests of the profession throughout the kingdom, there is the same reason for the various Provincial Societies uniting together, in order to possess an organization giving them the means of a united action, as there is for the individual Solicitors of any locality doing so for the same purpose. The Incorporated Society, which, until the establishment of the Metropolitan and Provincial Association, was the only body drawing its Members from the whole profession, has also effected much good, and forms a valuable means of preserving and enforcing those privileges which yet remain in their possession, as well as of exercising a wise supervision over the scattered Members of the profession, and over the candidates for admission into its ranks; but it is not by itself, and, from its constitution, probably, can never be, sufficient to meet the wants of the profession; and some of its most valuable characteristics are precisely those which prove the necessity which exists for another Association, zealously co-operating with the Incorporated Society wherever that is possible; but, at the same time, more unfettered in its action, and more capable of modification to meet the views of its Members. A chartered and privileged body can never be the means of agitating the various questions which it is important for Solicitors to see raised at the present time; besides which, the Incorporated Society must always be too expensive and too predominantly metropolitan in its character and government fairly and satisfactorily to represent a body so scattered as the Attorneys and Solicitors of England and Wales.

Again, at no former period has the necessity for union been so manifest. The whole course of recent legislation—the steps which have been successfully made by the Bar to gain an exclusive monopoly of the Inns of Court, giving them a power, in many points, uncontrolled even by the Legislature of the country—the tone and mode of operation of the whole of society, pointing everywhere to the ever-increasing action of companies and associations for obtaining any valuable end—all proclaim that henceforth those who have a common interest must follow the example thus set, and make common cause with each other, or submit

to see themselves neglected or oppressed. In the case of Solicitors, their peculiar functions necessarily bring them into immediate contact with the most active powers of the kingdom—the Legislature and the Bar. It is not neglect, which might be comparatively a blessing, it is oppression they have to fear, and against this it is incumbent upon them to unite in self-defence. Heavily taxed beyond the other classes of their fellow-subjects—prevented by act of parliament from placing their own estimate upon their time and labour—excluded continually more and more strictly from posts of honourable distinction in their own profession—with an almost impassable barrier between themselves and the higher branch of the law—always peculiarly liable to be misjudged by the public, who are unable to exercise an enlightened judgment on the value of the advice and aid for which they are compelled to pay, or how far its price depends upon the will of the Solicitor, and how far upon the system, which he is only the means of administering—Attorneys and Solicitors will never occupy that position, or enjoy that estimation, to which they are entitled, until they cordially unite in order to vindicate and maintain it.

Proposed Provincial Operations.

To extend these views, as well as to ascertain how far they are shared by the members of the profession in those parts of the country from which the Association has, up to the present time, derived the smallest amount of support, the Committee instructed their Secretary to arrange to visit—and, if possible, in company with Mr. J. Sudlow, of Manchester, the Honorary Secretary to the Committee for the Northern Circuit—several of the principal towns in the southern and western counties.

Owing to various circumstances, the necessary arrangements were not completed until the beginning of the present year, when, however, those gentlemen were prepared to visit the towns of Birmingham, Worcester, Cheltenham, Gloucester, Bristol, Bath, Taunton, Exeter, Devonport, Plymouth, Salisbury, and Southampton; and letters promising co-operation had been received from members of the Association residing in Worcester, Cheltenham, Bristol, Taunton, Plymouth, Salisbury, and Southampton. The present Session of Parliament, however, opened so actively in matters of Law Reform, and it was also necessary to give so much attention upon the spot to the bills which were being prepared by the Association, that it was then found impossible for the secretary to leave town; but it is still the wish of the Committee that the proposed tour should take place, as soon as the state of business may permit it; and they feel justified, from the success which has attended a similar step in the North of England, which will be noticed presently, in entertaining a confident expectation, that it will be the means of greatly increasing the strength, and the consequent utility, of the Association.

In the Report of last year, the Committee

mentioned that those of their number who were resident in the counties situate in the Northern Circuit had been formed into a Committee, for the purpose of carrying out such of the objects of the Association as could be effected locally. To that district have been this year added the counties of Chester and Derby; and an arrangement has been entered into by which one-fourth of the annual subscriptions derived from members residing within the district is allowed to this local Committee for the purpose of defraying their expenses.

In exercise of the power given to them for that purpose, the Committee for the Northern Circuit have this year added to their number Mr. Cobbett, Mr. Thorley, Mr. Gibson, and Mr. F. Robinson, of Manchester; Mr. Bulmer, Mr. Hamilton Richardson, and Mr. Sangster, of Leeds; and Mr. Webster, of Sheffield.

The principal object of the Committee during the past year has been to call the attention of their professional brethren in the Circuit to the importance of the Association.

For this purpose, after sending the last Annual Report to every member of the Association within their district, the Honorary Secretary entered into communication with many solicitors in different towns within the district, and urged upon them the expediency of calling meetings of the profession in their neighbourhood, in order that the objects of the Association might be fully discussed, and its importance more generally known. He also forwarded copies of one of the addresses issued by the Association to a large number of Solicitors, resident in small towns within the district, urging them to become members. These steps, however, did not produce such an accession of numbers as the Committee had hoped and expected would have resulted from them; and it was therefore determined, in the month of Oct. last, that the Honorary Secretary should, by personal communication, make arrangements for meetings in the principal towns in the district, with the exception of those in Yorkshire, of which the members of the Committee resident in Leeds kindly undertook the management.

In consequence of the hesitation which was generally evinced by the members in taking upon themselves the responsibility of calling their professional brethren together, the Honorary Secretary found it necessary to visit the various towns himself, for the purpose of making even the preliminary arrangements. He accordingly visited the towns of Lancaster, Carlisle, Newcastle, Sunderland, Stockton, North Shields, Durham, and Darlington, and meetings were held in the first five of those towns, at which he was supported by Mr. Street, of Manchester. In every instance they were met by some of the leading local Solicitors, and resolutions were passed, approving the objects of the Association, and appointing Committees to canvass for members. The Committee feel satisfied that considerable good has already resulted from this step, and that still more may be anticipated. The Yorkshire Members of

the Committee have commenced a similar course of proceedings, which also appears likely to be attended with much advantage. A meeting has been held at Wakefield, at which a deputation from Leeds attended; and, after a full discussion of the nature and objects of the Association, a resolution to support it was passed unanimously. Meetings for the same purpose will shortly be held at Sheffield, Bradford, Halifax, Huddersfield, and other towns in the West Riding.

Considering the proverbial apathy which has for years existed in the profession on matters affecting them as a body, the Committee think, that the result of these proceedings justifies a confident hope for the extension of the Association when the profession feel, as at present it appears beginning to feel, a more adequate sense of the beneficial result which must eventually spring from a system of combined operation.

To enable their provincial members to take as much part as possible in the regular operations of the Society, the Committee have turned their attention to the subject of the expenses incurred by gentlemen who come to town to attend their meetings; and after giving the subject their best consideration, they are of opinion that, though, on the one hand, were the general funds to bear the expenses of each provincial Committee-man in travelling to town to attend their meetings, a single journey would, in many cases, more than exhaust the whole of the funds derived from the district represented; yet that, on the other hand, it is very desirable to form as many local committees as possible upon the same arrangement as that which they have made with the Northern Circuit Committee: this would enable each district to be represented at the meetings of the Central Committee, at all events upon occasions when any subjects of importance were expected to be discussed; and they accordingly recommend this subject to the attention of their provincial members.

LAW REPORTING.

To the Editor of the Legal Observer.

SIR,—You have already noticed the Report of the Committee of the Law Amendment Society on the present system of Law Reporting, which suggests, that inasmuch as the Reports constitute the Law of the Land, they should, like the Statutes of the realm, be officially promulgated, and that authenticated Reports should be rendered accessible to the whole profession, by reducing the cost to about one-tenth of the sum now charged. Hardly any abuse exists from which some individual does not derive advantage, and I am not surprised to find the suggestions of the Law Amendment Society on this subject have excited considerable hostility from those who conceive their interests compromised by the proposed alteration.

It is not my good fortune generally to agree

with the Law Amendment Society. The reforms advocated by that body are usually of too theoretical and too sweeping a character to obtain the concurrence of an old practitioner, but I was not prepared to find the motives of the society assailed in such unmeasured language as they have been by one of your weekly contemporaries. The "*Law Times*" contains the following *liberal* observations in reference to the intentions of those by whom the report in question was promulgated.

"The Law Amendment Society is professed to be established for certain great *public* objects, and it was never intended by those who have given it their support, that it should be used for *private* objects—to urge war against, and utterly to seek to destroy, a particular class of private persons, whether for the purpose of gratifying the spleen of disappointed authors, or any other motive equally discreditable."

These are hard words, at which I have no reason to feel offended, and if the Law Amendment Society think it worth while, they have the means and the ability to defend themselves. I cannot forget, however, that the plea now put forward by that society was advocated and commended, only a few years since, in another quarter; and if rumour is not more than ordinarily mendacious, a scheme somewhat analogous to it was appropriated by one who did not originate it, to serve a private purpose. The result was, that under the high-sounding name of a society—which really means an individual—some very ephemeral fabrications were brought into existence, attended, I rather guess, with as little profit to the mercantile speculator as benefit to the public.

Be this as it may, I am bound to assume that the eloquent bitterness exhibited by your contemporary, in regard to the Law Amendment Society, is the outbreak of purely professional feelings, and that his judgment in this matter is not warped or influenced in the slightest degree by the circumstance of his having recently added to his numerous and honourable avocations, the highly respectable business of a bookseller and publisher.

FAIR PLAY.

THE LAW INSTITUTION.

To the Editor of the Legal Observer.

Reverting to the Report of the Council to the twenty-second Annual General Meeting of the Society, held on the 30th May last, I find that as a preface to it the Council wisely advert to the origin of the society, and state for the information of the profession not yet enrolled in the Society, some of the objects for which it was founded. From this, I am glad to perceive that the Council are alive to the importance of inducing those members of the profession who have not yet become members of the Society, to join the Society, in order that it may become more essentially useful to the profession at large.

Many of the founders of the Society are already gathered to their fathers,—some have been called to the magisterial bench, and others

still linger in the profession in anxious hope to see their objects, as founders, fully carried out.

To the liberality of those thus really or legally defunct, or now cogitating retirement from the profession, the Society is mainly indebted for the valuable property it possesses in the buildings and library of the Institution; and it remains to the members to carry out the objects of the founders by dedicating the building and library, by easy terms of admission, to the use of the profession. Country members are now admitted on payment of 10*l*.; let the author of that bye-law proceed, and admit them on payment of 5*l*., and let London members be admitted on payment of 10*l*. The Society is a gainer by every respectable practitioner who may be induced to join it, and the objects of the founders of the Society are thereby nearer being realized.

Let us hope that the present Council generally will adopt these views, and thus carry out the real objects of the founders of the Society, and that the Society in future will take care to place upon the Council those who have these objects at heart, as they continue from time to time to lose the services of founders and benefactors to the Society.

† SOCIUS.

NOTES OF THE WEEK.

HOURS OF ATTENDANCE AT THE MARSHAL'S OFFICE—NISI PRIUS.

It has been represented through the medium of the Incorporated Law Society, that it would be convenient to the practitioners, instead of the offices of the Marshal of the Courts of Nisi Prius in London and Middlesex being closed from 2 to 6, that they should continue open till 5, by which hour the Lists for the following day could be made out, and it appears that the Marshal of the Queen's Bench has acted on the suggestion, and in future, during the Term and Sittings, his office will be open from 11 till 5, and not in the evening. Thus two or three hours earlier information

will generally be obtained of the arrangements for the following day.

We trust the same rule will be made in the Common Pleas and Exchequer; otherwise the advantage of the alteration will be much diminished.

VICE-CHANCELLOR OF THE DUCHY OF LANCASTER.

This office, which had become vacant by the sudden death of Mr. Horace Twiss, has been conferred by Lord Campbell, (to whose gift, as Chancellor of the Duchy, it fell,) upon Mr. W. Page Wood, of the Equity Bar, one of her Majesty's Counsel, Member for Oxford, and son of Mr. Alderman Wood, who for so many years represented the City of London.

NEW COUNTY COURT JUDGE.

The Lord Chancellor has appointed Serjeant Herbert Jones, to succeed the late lamented Mr. Starkie, as Judge of the County Court for the Clerkenwell District. Mr. Jones was called to the Bar in May, 1828, and took the coif in 1842; he is a member of the South Wales Circuit.

CONCLUSION OF EASTER TERM.

The lack of business which marked the commencement of Easter Term, continued to distinguish its close. The absence of new business was a source of very general observation amongst the practitioners in all the Courts. The Equity Courts do not sit again until the first day of Trinity Term, but the Sittings of the Common Law Courts continue until Monday next, inclusive.

TRINITY TERM EXAMINATION.

The next Examination has been fixed for Tuesday the 5th June. The number of Candidates will be considerably less than a hundred. The testimonials of service of Articles are to be left at the Office of the Incorporated Law Society on Tuesday, the 29th instant.

RECENT DECISIONS IN THE SUPERIOR COURTS. AND SHORT NOTES OF CASES.

House of Lords.

Livesey v. Livesey. April 23, 1849.

WILL.—CONSTRUCTION.—ELDEST SON.

Held (affirming the decision of the Court below,) that where the testatrix had excluded from the bequest her daughter's eldest son, or such of her sons as by the death of an elder brother might become the eldest son, the death of the eldest son after the testatrix did not affect the bequest, and the second son becoming the eldest before the youngest attained 21, was excluded.

THE testatrix, Jane Worthington, by her will dated April, 1805, devised certain freehold estates, and made several especial bequests and *inter alia* bequeathed a sum of ten guineas to the eldest son of her daughter, Eliza Livesey, leaving him no larger sum, because he would have a handsome provision out of his father's and grandfather's estates. She then devised all the residue of her estates and effects, real or personal, to executors on trust to pay one moiety to the children of her daughter Jane, to be equally divided amongst them when the youngest should attain 21. But if any should

die leaving lawful issue, such issue should take the share of the deceased parent, and if her daughter Jane should have no lawful issue, or such children die under 21, the moiety should go to the children of her daughter Eliza. The testatrix then directed the other moiety of her estates and effects to be paid to the children of her daughter Eliza, their heirs, &c., when the youngest should attain 21, except her eldest son, or such of her sons as might by the death of an elder brother become the eldest son. The testatrix died in June, 1815, leaving her two daughters surviving, and the will was proved by her daughter Jane, sole surviving executrix. Eliza Livesey had five children; the eldest of whom was a son, and attained 21 in 1817, and died without issue in 1827, whereupon the second son James Worthington Livesey, the present appellant, became the eldest son. The third child died, under 21, and the 4th and 5th were the respondents Mary Carter Livesey, a lunatic, and Harding Livesey, who attained 21 in 1825 and 1830 respectively. The testatrix's other daughter, Jane, had two children. In Easter Term, 1822, a bill was filed to establish the will, and a reference was made to the Master. Several bills of revivor and supplement were made necessary in consequence of the deaths of some parties, the marriages of others, and the births of children. On the hearing before the Vice-Chancellor in 1842, his Honor was of opinion that James Worthington Livesey had become an eldest son, and was not entitled to take any share in the residuary estate, and that the moiety was divisible between Mary Carter Livesey and Harding Livesey, as tenants in common. An appeal from that decree was heard by Lord Chancellor Lyndhurst, in 1844, who in July, 1846, dismissed it without costs. Whereupon this appeal was presented to reverse the former decree.

Roll and Speed for the appellant, contended that the eldest son was the eldest son at the death of the testatrix, and that the reason for the exclusion of the eldest son had not taken place, as the eldest son Edmund had come into most of the property soon after attaining 21, and had given it by will to Mary Carter Livesey, who ought therefore to be excluded from the moiety of the testatrix's estate.

Bethell and Stinton for the respondents.

The Lord Chancellor said, that the words in the will were perfectly free from doubt, and no artificial rules of construction were required. It was clear that the person, who was or should become an eldest son, was excluded from taking a share of the moiety of the residue. The appellant had become an eldest son by the death of his elder brother, before the youngest child attained 21. The Court would not introduce phrases to make a will perfect after events had happened, on the presumption that the testatrix would have spoken differently if she had foreseen those events. The words of the exclusion were sufficient, and the appeal must be dismissed with costs.

Lord Chancellor.

Fitch v. Rochfort. April 19, 21, 1849.

PAWNBROKER.—USURY LAWS.

Held, that the 2 & 3 Vict. c. 37, 'is not affected by the 36 G. 3, c. 87, and the 39 & 40 G. 3, c. 99, as to the amount of interest to be received by pawnbrokers on advances on the deposit of goods above 10l.

THE defendant, a married woman with separate estate independent of her husband, being in want of money in 1845-6, applied to the defendant a pawnbroker, in Brewer-street, Golden-square, for advances on deposits of her jewels, plate, &c. Several sums were advanced at different times, amounting in the whole to 1,395l. and the goods deposited were estimated at 3,000l. The property was divided into nine parcels, for the purpose of redemption, and upon each deposit a duplicate, specifying the articles deposited and the amount advanced, which was signed by the defendant, and a memorandum were given. The memorandum was to the effect, that interest was to be paid at the rate of 3d. per pound per month, and that if the property were not redeemed or the interest paid within one year, it would be sold, and the principal and interest and expenses of sale paid, and the surplus, if any, paid to the plaintiff, or her agent, upon demand. The plaintiff had paid the interest due on the property up to the end of 1846, but in Nov. 1848, the period agreed upon having expired, the defendant gave repeated notices, without success, that unless the interest due were paid the property would be sold in December, 1848. The defendant, having received no answer, accordingly, had a catalogue printed, and advertised that they were to be sold without reserve by Mr. Robins. Upon the delivery of this catalogue to the plaintiff, she applied to defendant to stop the sale, and on his refusal a bill was filed by the next friend of the plaintiff. The Vice-Chancellor of England had issued an *ex parte* injunction, which was served on the morning of the sale. The Lord Chancellor had on motion discharged that order, on the ground of the omission of material facts in the affidavit in support of the application. The bill was then amended, and another application upon a new affidavit was made to the Vice-Chancellor to restore the injunction, which was granted on the ground that the transaction was of a pawnbroking nature, and illegal under the 39 & 40 Geo. 3, c. 99, whereupon the appeal was presented.

Roll and Wright, for the appellant; *Malins and Swift* for the respondent, cited *Cowie v. Harris*, 1 Mood. & Mal. 141; *Armstrong v. Armstrong*, 3 Myl. & K. 45; *Ferguson v. Norman*, 5 Bing. N. S. 76; 6 Scott, 794; *Tregoning v. Attenborough*, 7 Bing. 97; *Targum v. Mosedon*, 7 M. & W. 504; and *Pennell v. Attenborough*, 4 Q. B. 868.

The Lord Chancellor said, there was no doubt on the construction of the 36 G. 3, c. 87, and the 39 & 40 G. 3, c. 99, and that all persons, whether pawnbrokers or not, were equally

entitled to the benefit of the 2 & 3 Vict. c. 37. A pawnbroker was not excepted from the benefits of this act when the transaction was above 10*l*. *Ferguson v. Norman; Pennell v. Attenborough*. The order for the injunction must therefore be discharged with the costs incurred by the defendant in the court below.

May 4.—*In re Watkins*—Writ of *habeas corpus* to bring up the body of lunatic before the Court.

— 4.—*In re Brown*—Petition dismissed so far as it charged misconduct on Lunatic's Committee, and reference to the Master to approve of scheme for management of estate.

— 4.—*Attorney-General v. Monro*—Review of taxation of costs ordered, as only two counsel were allowed in ordinary cases.

Rolls' Court.

Lord Suffield *v. Whalley and another*. April 18, 19, 1849.

In an action for a promissory note and procuration money, a cognovit was given, which was set aside by the Court of Exchequer, as invalid, and an order was made by consent for a small sum. Held, that a bill to set aside the judgment for fraud was not demurrable.

THIS bill was filed by Lord Suffield against Charles James Whalley and Charles Lewis, to have a cognovit for 3,000*l*. delivered up to be cancelled, on the ground that it was fraudulently obtained, and to have a judgment entered upon it set aside. The bill also prayed in the alternative, that an action might be directed to be brought by Lewis against the plaintiff to try Lewis's right to any and what procuration money in respect of a loan of 190,000*l*., and that in the mean time the defendants might be restrained from issuing execution or taking proceedings under the judgment, and from assigning or making over the same. It appeared that Lewis was employed by the plaintiff to raise the sum of 190,000*l*., for which he was to receive 4,000*l*. procuration money, and Lewis engaged to discount the plaintiff's promissory note for 1,000*l*. at three months, for which he was to have 150*l*. discount. Lewis brought an action in April, 1847, to recover the amount of the promissory note and procuration money, and a cognovit for 3,000*l*. was given by the plaintiff, and a bill of exchange for 1,000*l*., whereupon the promissory note was delivered up. Judgment was afterwards entered upon the cognovit, and the plaintiff, in 1848, applied to the Court of Exchequer to set it aside, and that Court held that the cognovit was invalid, and made an order by consent for the payment to Lewis of 780*l*. in four months, or that the judgment should stand. It was alleged that a tender of 780*l*. had been made, but was refused.

Turner and Hallett appeared in support of a demurrer to this bill, and contended that as the Court of Exchequer had disposed of the cognovit, the plaintiff was estopped from disputing the judgment, as it was obtained by consent.

Houppell and Bickner, contra, urged that the plaintiff was now in a position to dispute the validity of the cognovit, and the judgment thereon, but that, as by the forms of practice in the Exchequer, the matter could not be brought before that Court, he was entitled to relief in equity.

The Master of the Rolls held, that the bill was not demurrable, and the demurrer would, therefore, be overruled.

May 3.—*Williams v. Bryant*—Stand over.

— 3.—*Robinson v. Hadley*—Appointment of receiver, refused.

— 3.—*In re Watkins*—*Habeas corpus* to bring up lunatic, refused.

Vice-Chancellor of England.

Yates v. Maddan. April 24, 1849.

WILL.—CONSTRUCTION.—ANNUITY.—CURRENCY.

*Testator gave an annuity of 100*l*. and other annuities of 100*l*. and 50*l*., and 50*l*. "sterling," held, that the first annuity was 100*l*. "currency."*

*Held also, on construction of the will, that the plaintiff was entitled absolutely to such a sum as would produce 100*l*. currency.*

THE testator, the Hon. Thomas L. Yates, of Jamaica, by his will, dated July, 1832, bequeathed, *inter alia*, an annuity of 100*l*. per annum, to his son Edward C. Yates, for his life, and at his death leaving a child, the annuity to be continued for such child's use and benefit, to be paid to his or her mother. The testator also gave an annuity of 100*l*. sterling to one of his sisters, and to two others a sum of 50*l*. sterling each per annum, during their lives. He afterwards, in January and March, 1835, made two codicils in England, whereby he revoked certain of the former bequests, and died in July, 1835. The testator's son died in Aug. 1840, up to which period the executors had paid the annuity in the currency of Jamaica, and afterwards continued to pay the same in the same currency to the widow on behalf of the infant plaintiff, Elizabeth Yates, who was the only child surviving. Two questions were raised: 1st, whether the annuity was to be paid in sterling money of this country on the ground that the will was republished by the execution of the two codicils, and that, therefore, the will was to be construed accordingly; and 2ndly, whether the annuity was only to be paid during the infant's life, or to have so much money paid absolutely as would produce the annual sum of 100*l*.

Robt and E. Smith, for the plaintiff: *Stuart, Bethell, Speed, and Hardy*, for the defendants.

The Vice-Chancellor said, the testator had given three other annuities to his sisters, and to these bequests he had annexed the word "sterling," whereas that to the plaintiff was given without such addition. The testator, therefore, must have intended that it should be a different species of property, and to give an annuity of 100*l*. currency. As to the second point, his Honour held, that the plaintiff was

entitled absolutely to such a sum as would produce the annuity of 100*l.* currency.

May 4.—*In re Hamilton's Settlement*—Order for payment of fund out of Court to petitioners.

— 4.—*In re Ormskirk Charities*—Order to build school-house with money in trustees' hands.

— 5.—*Smith v. Pincombe*—Agreement for compromise set aside.

— 5.—*King Edward's School v. London and North-Western Railway Company*—Injunction to restrain proceeding with railway works refused.

— 5.—*Blair v. Cuthbertson*—Order as to settlement of ward in Chancery on marriage.

— 7.—*In re Shrewsbury Grammar School*—Petition dismissed as to grammar school—Costs to be paid out of the funds.

— 8.—*Esparte Collins*—Order for investment of money.

Vice-Chancellor Knight Bruce.

Hook v. Sankey and another. April 19, 1849.

AGREEMENT. — SOLICITORS. — RAILWAY COSTS.

On the amalgamation of two railway companies, the local solicitors wrote to the London solicitor to the effect that he should have one-third of the profit in the business of the amalgamated companies. Previous to the amalgamation the profits were equally shared: Held, that this concession formed a sufficient consideration, and the letter was a valid contract.

THE plaintiff, a London solicitor, instituted this suit against Messrs. Sahkey and Sladden, solicitors at Canterbury, claiming one-third of the clear profits of bills of costs which were paid to the defendants for business done as local solicitors of the Great Kent Atmospheric Railway Company and the Canterbury and Dover Railway Company, which had been amalgamated. The latter railway was projected in July, 1845, and the plaintiff and defendants were by agreement jointly employed, and shared the profits in moieties. Upon the amalgamation of the companies, the defendant Sladden, in the name of the firm, wrote the following letter:—"Great Kent Atmospheric Railway, Canterbury, Oct. 11, 1845. Dear Hook,—We think it fair that you should have one-third of our clear profits as local solicitors and agents since the amalgamation of the Canterbury and Dover Railway with the above scheme, and we shall accordingly take the work upon that understanding with you, and remain," &c. The defendants contended that the letter did not amount to an agreement, it being written hastily and without the partner's concurrence; and that it was not founded on any consideration; or that, at all events, the defendant Sankey was not bound, as no agreement was entered into by him. For the plaintiff, it was urged that he had conceded his share of the moiety of the profits in the original company, which constituted a sufficient consideration.

Wigram and Mackeson for the plaintiff; *Teed and Daniel* for the defendant Sladden; *Swanston and Goodeve* for the defendant Sankey.

The Vice-Chancellor said, that the letter having been accepted by the plaintiff, the contract founded thereon was binding. There must be an inquiry as to the sums received by the defendants in respect of any bills of costs, and what part had been profit.

May 4.—*In re Oxford and Worcester Extension Railway Company*—Order to wind up company under 11 & 12 Vict. c. 45.

— 4.—*In re Warwick and Worcester Railway Company*—Stand over to Trinity Term.

— 4.—*In re Gloucester, Abergystwith and Central Wales Railway Company*—Stand over.

— 4.—*In re Hereford and Merthyr Tydvil Railway Company*—Order for winding up the company.

— 4.—*In re Direct London and Manchester Railway Company*—Stand over.

— 5.—*Grindley v. Hall*—

— 7.—*Stanley v. Flavius*—Writ of *ne exeat regno* discharged—Motion to stand over to second day in Trinity Term.

— 7.—*Fowler v. Reynal*—Order for trustees under marriage settlement, to pay trust money into Court.

— 3, 4, 8.—*Wood v. North Staffordshire Railway Company*—Injunction restraining interference with road and bridge contrary to the award.

Vice-Chancellor Wigram.

Labouchere v. Clarkson. April 4, 17, 20, 1849.

EXECUTOR.—NEXT OF KIN.—COLLUSION.

Where certain next of kin, by collusion with the executor, had each obtained a certain sum of money, Held, that each was only liable for the amount he had received.

THE testatrix, Elizabeth Clarkson, died in 1836, and by her will bequeathed her residuary estate to be divided amongst the Trinitarian Bible Society, the Church Missionary Society, the Home Mission, the Society of United Brethren called Moravians, and the Society for converting the Jews to Christianity. This suit was thereupon instituted by the secretary of the Trinitarian Bible Society to carry into effect the trusts so created. The bill claimed one-fifth of the residue, and charged that the executor and two of the next of kin of the testatrix, by collusion, had possessed themselves of 200*l.* a piece belonging to the estate of the testatrix, and appropriated the same to their use. It was contended that the next of kin had colluded with the executor, and were, together with the executor, therefore, each liable for the whole sum of 600*l.* which had been misappropriated.

The Solicitor-General and J. Smith for the plaintiff; *Rolt, Stinter, Egan, Walker and Willcock* for the defendants.

The Vice-Chancellor said, that the next of kin were individually only answerable for the sum received by each, with interest. The costs

of the suit created by the breach of trust to be borne by the defendants, and, so far as they related to the administration of the estate, to be paid out of the same.

May 4.—*Reynell v. Sprye, Sprye v. Reynell*—Part heard.

—5.—*Adams v. London and Blackwall Rail. Co.*—Demurrer overruled with costs.

—7.—*In re Elborow's Charity*—Order as to costs.

—8.—*Mower v. Orr*—Judgment on construction of will.

Queen's Bench.

(Before the Four Judges.)

Barwell and others v. Hundred of Winterstone.
April 19, 1849.

DAMAGE TO PROPERTY.—FELONY.

Quere, whether an action will lie against parties for damages to property which would amount to felony under the 7 & 8 G. 4, c. 30.

THIS action was brought by the plaintiffs to recover damages for the destruction of certain property used in the plaintiffs' mines, and was tried at the last Somersetsshire Assizes before Mr. Justice Williams. The plaintiffs had recently, in consequence of some discoveries in chemistry, washed the slag and ore in wooden troughs constructed for that purpose, and the water of the river had thereby been impregnated with white lead and rendered poisonous. Some of the inhabitants of Winterstone Hundred had in the night time destroyed the troughs to prevent the washing of the slag and ore. The plaintiffs obtained a verdict with 130*l.* damages, but the judge reserved leave to the defendants to move for a verdict in their favour.

This application was now made upon the leave so reserved to enter the verdict for the defendants, and it was contended that the action would not lie, as it was a felony under the Malicious Injuries Act, 7 & 8 G. 4, c. 30.

Crowder, Q. C., in support of the application: The Court granted the rule nisi.

May 3.—*Regina v. Charretie*—Judgment on defendant convicted of sale of East India cadetship.

—3.—*Keymer v. Laurie and others*—Rule for new trial on the ground of misdirection, refused.

—3.—*Regina v. Asthill*—Judgment on conviction for publishing a libel.

—5.—*Regina v. Hulton*—Judgment for the Crown on demurrer to plea to return to mandamus.

—5.—*Regina v. Reid*—Rule for allowance of certain law expenses and disallowance of others.

—5.—*Regina v. Owen*—Rule absolute for quo warranto to clerk of Merionethshire County Court.

—5, 7.—*In re the Arbitration of Great*

Northern Railway Company and Chapman—Rule to set aside award, discharged with costs.

—7.—*Beron de Bode v. Regina*—Rule nisi for writ of error, discharged.

—7.—*Regina v. Whitmarsh*—Rule absolute on Registrar of Joint-Stock Companies for mandamus to renew certificate of provisional registration.

—7.—*O'Hare v. Reeves*—Rule to rescind order for satisfaction to be entered on the record, refused.

—7.—*Barker v. Lambert*—Rule on attorneys to render an account of all actions brought in plaintiff's name, and all monies received, discharged without costs.

Queen's Bench Practice Court.

Esparte the Sea Fire and Life Assurance Company. April 28, 30, 1849.

MANDAMUS.—REGISTRAR OF JOINT-STOCK COMPANIES.

Mandamus granted against the registrar of joint-stock companies to receive and register a return, changing the name of a company from a company to a corporation.

THIS was an application for a mandamus, to issue to the registrar of joint-stock companies to receive and registrar a return by which the name of this company was changed from a company to a corporation. The promoters had already registered the company, but being desirous to alter the name, sent in a further return to the registrar with the alteration of name, which he refused to register, upon the ground that the company being joint-stock, was not entitled to be called a corporation.

Power, in support of the application, contended, that the registrar had no right or authority to exercise his discretion upon the matter.

Coleridge, J., held that the mandamus would issue upon the authority of *Esparte the Sheffield, Rotherham, and Chesterfield Fire and Life Assurance Company*, 16 Law J., N. S. 407, to the registrar to receive and register the return.

May 3.—*Regina v. Newton*—Rule refused, with leave to renew application on fresh affidavits.

—3.—*Esparte Hounsfield, clerk*—Rule nisi for criminal information against publisher of newspaper, refused, on the ground that no injurious effect was caused.

—3.—*Esparte the Commissioners in Lunacy*—Rule for habeas corpus to bring up the body of a young lady, refused, on the ground that the Court would not interfere with the mother, as no charge of cruelty or other circumstances were proved.

—4.—*Regina v. Judge of Cornwall County Court, Esparte Newton v. Nancanon*—Rule nisi for prohibition to judge from proceeding in the cause.

—5.—*In re Jay*—Rule absolute on attorney to pay money or hand over mortgage deed if the money had been invested.

—5.—*Regina v. Newton*—Rule nisi for habeas corpus.

May 7.—*Regina v. Bok, Ex parte O'herny*—Rule nisi for *quo warranto* to High Bailiff of Blackburn County Court.

Common Pleas.

***Pritchett v. Smart.* April 24, 1849.**

**BROKER'S BOOK.—PRODUCTION.—STOCK
JOBBER ACT.**

An application for the production to the defendant of the plaintiff's broker's book under 7 G. 2, c. 8, ss. 8, 9, was refused on the ground that, as a Court of Equity would not grant a bill of discovery because it would subject the party to penalties, a Court of Law was concluded against summarily interfering, and also because the defendant had shown no equitable interest in the contents of the broker's book.

THIS was a motion, under the 7 G. 2, c. 8, ss. 8, 9, for a rule to show cause why the plaintiff should not produce to defendant his broker's book, which was alleged to contain evidence of certain transactions relating to the cause of action. The action was brought upon a bill of exchange, of which the plaintiff, who was a sworn broker of the city of London, was indorsee, and the defendant acceptor. It was alleged that the bill was an accommodation bill between the drawer and acceptor, and indorsed to the plaintiff by the drawer on account of some differences on stock jobbing transactions. An application had been therefore made to Mr. Justice Maule at chambers, but was refused on the ground that a Court of Equity would grant a bill of discovery. But it subsequently appeared that a Court of Equity would not interfere, on the ground that a discovery would not be granted, because it would subject the party to penalties. Whereupon this application was now made.

Byles, S. L., in support of the motion, cited *Bullock v. Richardson*, 11 Ves. 373, as showing that a Court of Equity would not interfere in the present case, and contended that, as the words of the statute directing the production of the book were quite general, the present rule ought to be granted.

The Court, however, were of opinion that the rule ought to be refused, on the ground that the defendant had not shown any equitable interest in the book, and that the relation in which he stood to the plaintiff did not give him any equitable interest in its contents. The application was also refused, on the ground that, as the production of the book would subject the party to penalties, and as a Court of Equity would, under such circumstances, refuse a bill of discovery, a Court of Law could not summarily interfere. A Court of Law would only grant such a rule to save a party going into equity. The rule must, therefore, be refused.

May 3.—*Barnes v. Ward.*—*Cur. ad. vult.*

—4.—*Thompson v. Wesleyan Newspaper Association.*—*Cur. ad. vult.*

—5, 7.—*Richards v. London, Brighton, and*

***South Coast Railway Company.*—Rule to enter verdict for the defendant upon leave reserved, discharged.**

Echequer.

***Ex parte Fowkes, In re Wilts, Somerset, and Weymouth Railway Company.* Jan. 19, April 17, 1849.**

AWARD.—COMPENSATION.—RAILWAY.

Held, that a rehearing under a reference to ascertain the compensation under a railway act would not be granted, but leave given to bring an action of ejectment.

A RULE nisi had been obtained on January 19, to set aside an award made by a Mr. Powell in an arbitration between Mr. Fowkes, the owner of property near Weymouth, and the Wilts, Somerset, and Weymouth Railway Company. It was contended, in support of the rule, that there was no satisfactory evidence of his appointment as umpire either by the Railway Commissioners or by one of their secretaries, under the Lands' Clauses Consolidation Act, and that the award was bad because it did not award the amount of costs, and that the railway company was to pay the same, and also because it had only awarded 1,700*l.* to Mr. Fowkes, whereas the evidence as to the value of the land showed it to be worth 7,000*l.*

Sir F. Kelly and Slade, against the rule, urged that the appointment of the arbitrator was properly made, or at all events that, as that circumstance had not been distinctly alleged in the affidavit, Mr. Fowkes could not now avail himself thereof, and that, as the 8 Vict. c. 18, s. 34, showed how the costs of the arbitration were to be borne, the award was properly silent on that subject.

Martin and Hodges in support of the rule.

The Court held, that a re-hearing before another arbitrator could not be granted. Mr. Fowkes might, however, bring an action of ejectment, by which means the points raised might be more fitly discussed. The rule must, therefore, be discharged without costs.

May 3.—*Attorney-General v. Marquis of Hertford.*—Judgment for the Crown, under the 8 & 9 Vict. c. 76, on information as to payment of legacy duties.

—3.—*Attorney-General v. Brown.*—Judgment for the Crown on information to recover penalties.

—4.—*Attorney-General v. Twyford and others.*—Judgment for the Crown on information for payment of legacy duties.

—4.—*In re Satirist Newspaper.*—Rule nisi to proceed on the bond under statute 1 Wm. 4, c. 73, discharged.

—5.—*Regina v. Skillibear.*—Motion for particulars of charges and penalties sought to be recovered by the Crown, refused.

—7.—*Gullick v. Hanley.*—Rule to enter verdict for one shilling, discharged.

—7.—*Brown v. Yardley.*—Rule absolute for new trial.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, MAY 19, 1849.  
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LAW OF EVIDENCE AMENDMENT BILL.

THE short summary furnished to our readers immediately after this bill was printed, we fear, has afforded a very inadequate—and perhaps not a very accurate—notion of the sweeping changes which such a measure as that suggested would introduce, not merely in what is called the Law of Evidence, but in the established system of judicial procedure.

As our readers are aware, the County Courts Act, 9 & 10 Vict. c. 95, s. 83, in any proceeding under that act, allows the parties and their wives to be examined, either on behalf of the plaintiff or defendant, and according to the preamble of Lord Brougham's Bill, "this enactment has been productive of *much good*, and it is expedient to extend its provisions to other cases." It will also be remembered that, by Lord Denman's Act, (6 & 7 W. 4, c. 85,) by which persons previously excluded by reason of incapacity arising from crime or interest, are rendered competent as witnesses, it is expressly provided, that this act "shall not render competent any party to any suit, action, or proceeding, individually named in the record, or any person in whose immediate and individual behalf any action may be brought or defended, either wholly or in part, or the husband or wife of such persons respectively." As this proviso stands in the way of the contemplated revolution, it is at once repealed, and it is expressly enacted that the parties in all proceedings, and their wives, shall be admissible. The following are the terms by which this alteration is proposed to be effected:—

arising in any suit, action, or other proceeding in any Court of Justice, or before any person or persons having by law, or by consent of parties, authority to hear, receive, and examine evidence, the parties thereto, and the persons in whose behalf the suit, action, or other proceeding may be brought or defended, and the husband and wife of such persons respectively, shall, except as hereinafter excepted, be competent and compellable to give evidence on oath or solemn affirmation in the cases wherein affirmation is by law receivable, either *viâ voce* or by deposition, according to the practice of the Court, on behalf of either or any of the parties to the said suit, action, or other proceeding."

This general declaration of competency is somewhat qualified by the three subsequent clauses, which provide,—1st, That no person who in any criminal proceeding, or inquiry before a coroner, is charged with the commission of any indictable offence, or any offence punishable on summary conviction, shall be competent or compellable to give evidence for or against himself. 2ndly, That nothing contained in the act shall extend, or apply, to proceedings instituted in consequence of adultery or seduction. And lastly, that this act shall not repeal the provisions of the 1 Vict. c. 26, with respect to wills.

It is proposed, therefore, by this bill, that in all civil proceedings, in whatever Court such proceedings may be instituted—except proceedings instituted in consequence of seduction and adultery, and in respect of wills—the parties to such proceedings, and their wives and husbands respectively, shall be competent and compellable to give evidence at either side. The bill containing this enactment is intitled "An Act to amend the Law of Evidence," but we have heard it described by persons not altogether disqualified from forming an opinion on such a subject, as

"That on the trial of any issue joined, or of any matter or question, or on any inquiry

"An Act to encourage the Commission of Wilful Perjury." No one conceives that those who framed the bill imagine that it will produce such a result, but we are inclined to concur with those who think that its enactments are eminently calculated to create a constant and habitual disregard for the obligation of an oath.

When it becomes law that the parties to an action *may*, the practical result will be, in a majority of cases, that they *must* be examined as witnesses on their own behalf. If the plaintiff or defendant is not placed in the witness-box, it will be urged, with irresistible effect, that he dares not submit to the ordeal of cross examination, and, conscience stricken, shrinks from supporting by his oath the case he instructed his advocate to lay before the jury. To remove the ground for this observation, those parties who have nerve enough will constantly be examined in support of their own cases.

In trials before the judges of the Superior Courts it does not often happen, as it does in three cases out of every four in the County Courts, that no defence is pretended or sought to be established. Parties usually go to trial disputing some fact within the knowledge of one or both the litigants, and the plaintiff or defendant who shrunk at the hour of trial from repeating on his oath what he had already told his friends—probably so often as to have brought himself to believe it—would be branded in his own circle as a person without veracity or character. The consequence of such a pressure is not altogether matter of speculation. A clause is constantly introduced into orders of reference giving an arbitrator the power of examining the parties to the reference. The reluctance manifested by every legal arbitrator to exercise this power, indicates how little value is placed upon evidence derived from such a source; and the experience of every arbitrator who has tried the experiment is condemnatory of the practice as worse than unsatisfactory.

The enactment in the new bill rendering the wives of litigant parties competent as witnesses for or against their husbands, is subject to an additional objection. It is an interference with the sanctity of domestic life which the law has hitherto respected. The power of examining a wife against or on behalf of her husband, may be made a formidable engine of oppression as well as injustice. As we read the bill, it does not exempt a wife from being examined for or against her husband even on the gravest

criminal charge. The proviso exempting the party charged in criminal cases from being compelled to give evidence against himself is sufficiently distinct, but the restriction does not extend beyond the accused party. The words are :—

"That nothing herein contained shall render any person who in any criminal proceeding, or in any inquiry before a coroner, is charged with the commission of any indictable offence, or any offence punishable on summary conviction, competent or compellable to give evidence on oath or affirmation for or against himself."

There is another enactment in the proposed bill, entitling parties to make evidence for themselves by preparing their books of account in such a form as to enable them afterwards to establish their claims by the production of such books; but this extraordinary privilege is to be confined to persons who are traders liable to the Bankrupt Laws, and it is provided, that the books so admissible in evidence "*shall appear to have been kept with such a reasonable degree of regularity as to be satisfactory to the Court.*" The importance as well as the novelty of the change proposed to be made in the Law of Evidence under this head, induces us to print the clause without abridgment :—

"And whereas it would conduce to the discovery of truth in many cases if the entries made by merchants, bankers, tradesmen, and other persons who are liable to become bankrupts under the Laws relating to Bankrupts, in their ledgers, day books, and other books of accounts, were admissible in evidence in Courts of Justice for the parties respectively making such entries, whenever the same appear to have been made from time to time with fairness and regularity; but the same cannot now be received in evidence: Be it therefore enacted, That from and after the passing of this act all entries made by any merchant, banker, tradesman, or other person who is liable to become bankrupt under the Laws relating to Bankrupts, in his ledger, day book, or other book or books of accounts, shall be received in evidence in any suit, action, or other proceeding in any Court of Justice, or before any person or persons having by law, or by consent of parties, authority to hear, receive, and examine evidence, wherein such merchant, banker, tradesman, or other person shall be a party, on behalf of such party, provided such ledger, day book, or other book of accounts shall appear to have been kept with such a reasonable degree of regularity as to be satisfactory to the Court, or to the person or persons so having authority as aforesaid to hear, receive, and examine evidence."

We have only space for the insertion of one other of the proposed enactments of this bill, by which the uncorroborated testimony of a single witness, is declared to be sufficient to support a judgment in all Courts and in *all cases*, with the single exception of affiliation cases. It is as follows ;—

“And whereas in the Ecclesiastical Courts the uncorroborated testimony of a single witness is in most cases insufficient in law to support a decree, and the same rule prevails to a certain extent in Courts of Equity, and is also the Law, or is adopted as a rule of decision, in certain cases of high treason, and in indictments for perjury: And whereas this rule is inconsistent with the general Law of evidence as recognised in Courts of Justice, and moreover rests on no sound foundation: Be it therefore enacted and declared, That from and after the passing of this act, the general Law of Evidence which allows a fact to be proved or disproved by the uncorroborated testimony of a single witness shall extend and apply to all Courts and to all cases alike: Provided always, that this act shall not apply or extend to orders of Affiliation.”

We had supposed, that the rule of law which provides that one witness is insufficient to convict on an indictment for perjury, rests on as solid a foundation as any rule known to our law; or adopting the language of Mr. Justice Coleridge, in the case of *The Queen v. Yates*,* we supposed “the rule that the testimony of a single witness is not sufficient to sustain an indictment for perjury is *not a mere technical rule*, but a rule founded on *substantial justice*.” In such cases there is only an oath against an oath, but if the principle of this bill should become the law of the land; we may yet see the accused and the accuser successively prosecuted and convicted for perjury, the one upon the uncorroborated testimony of the other!

Lord Brougham's Bill stands for a second reading, but we have no apprehension that the noble and learned lord will ever obtain the sanction of parliament to the measure in its present shape.

THE COURT OF EXCHEQUER AND THE BAR.

We cannot undertake to say whether it arises from any peculiarity in the constitution of the Court of Exchequer—the temper of its judges—or the character of those

members of the Bar who usually practise in it; but somehow or another, the scenes that have of late frequently occurred within its walls have obtained for it a distinction the reverse of desirable, and force the profession and the public to contrast it unfavourably with all the other Courts of Westminster Hall. To the unseemly and painful altercations of a personal character which have taken place from time to time in the Court, we have systematically and intentionally avoided all reference, but the considerations influencing us to adopt that course are inapplicable when the matter in discussion relates to the despatch of public business, and the conduct of an important branch of the profession.

The proceedings in the Court of Exchequer in the early part of this week, when the after-Term Sittings of the Court terminated, have necessarily been the subject of public observation, and are not undeserving of further notice. As our readers have learned by the publication of the official notices, the Court held Sittings in Banco contemporaneously with the Sittings at Nisi Prius after Term, the Court in Banc being confined to the dispatch of business in arrear in the New Trial and Demurrer Papers. The Nisi Prius Sittings of the Courts of Queen's Bench and Common Pleas commenced at Guildhall on Saturday last, but the Guildhall Sittings of the Court of Exchequer did not begin until Tuesday last, and of necessity concluded on that day, as the six days which the Courts are authorised by statute to sit after Easter Term, expired on that day. On Tuesday, therefore, one branch of the Court, presided over by the Chief Baron, was sitting at Guildhall, and another branch at Westminster. The Court sitting at Westminster on Tuesday selected a number of cases taken by the Barons from the General Demurrer Paper, which they determined to dispose of on this day, but in a majority of the cases so selected, the counsel retained to argue were not in attendance—those who were present declined to pray for the judgment of the Court in the absence of the opposite counsel engaged at the Nisi Prius Sittings at Guildhall—and the Barons having refused to listen to any applications to postpone the hearing of such cases, had the satisfaction of striking cause after cause out of the list, with no other effect than to put the parties to the trouble and expense of having the same causes again entered at the commencement of Trinity Term.

* Reported 1 Car. & Marsh. 132.

In the course of the discussion which preceded the adoption of this proceeding by the Court, a remark is said to have fallen from Mr. Baron Parke, which we perused with unfeigned regret. He said, "the Bar had entered into a *combination* to prevent the Judges from dispatching the business of their Courts." If this imputation were well-founded, it would reflect great dishonour on the Bar, and coming from a person so much esteemed and honoured as Baron Parke deservedly is, it cannot fail to create an unfavourable impression on the public mind. We frankly state, with all possible deference and respect for the learned Baron, that we believe the imputation is unfounded. The Bar, individually and collectively, are not disposed to throw any impediments in the way of the public business; but it is quite impossible that business can be satisfactorily proceeded with, when the same Court sits on the same day in London and at Westminster. We have uniformly advocated an arrangement by which the leaders of the Common Law Courts should attach themselves particularly to a single Court, according to the practice which prevails in the Equity Courts. It is impossible to expect, however, that either Leader or Junior should confine himself exclusively to the Sittings at *Nisi Prius* or in Banc. The leader at *Nisi Prius* must follow the cause when a new trial is to be moved for, or the rule for a new trial, if granted, is to be argued; and the services of the Junior who is called upon to argue a demurrer, are equally valuable when issues in fact are to be tried by a jury. The difficulty which was felt by the Court of Exchequer on Tuesday could never have existed, if the Court had not appointed to sit at Westminster, when the counsel ordinarily practising in it were necessarily engaged at Guildhall. The interests of the suitors cannot be said to be advantageously consulted, if the arrangements made by the Court for the dispatch of business deprive the suitors of the services of the counsel they have deliberately, and often anxiously, selected.

In explaining, and in some degree accounting for, the absence of counsel on the occasion alluded to, we must not be supposed to justify the practice of accepting business which cannot be personally attended to; nor should it be considered that we fail to appreciate the zeal and devotion of the judges in the discharge of their judicial duties. It is of the utmost im-

portance, however, in times like the present, that a good understanding should continue to exist between all the branches of the profession. The Bar stands towards the Bench in a relation somewhat analogous to the position which the House of Peers sustains in our political constitution. If the Bar ceases to be respected, the Bench will not long continue to be esteemed: when the one is despised, the other will not be much honoured.

CONVICTIONS FOR HIGH TREASON IN IRELAND.

THE House of Lords, the Court of Appeal in the last resort, has affirmed the judgment of the Courts in Ireland, upon Mr. Smith O'Brien and his misguided associates, with a unanimity and absence of hesitation, from which it may be inferred that the points raised on behalf of the prisoners, by their able and ingenious counsel, were not of such a nature as to create any reasonable doubts. The record of the judgment of the House of Lords has been since laid upon the table of the lower House of Parliament by Lord John Russell, with the intention of founding upon it a resolution for the expulsion of Mr. Smith O'Brien, which, as we have already had occasion to observe, is necessary in order to afford the constituency he was elected to represent an opportunity of finding another representative.

It now becomes the duty of those upon whom the responsibility rests of advising the Sovereign, to determine whether, in the case of any of the persons convicted, it is necessary or expedient to inflict the extreme sentence of the law; and if this question should be answered in the negative, to resolve upon what conditions mercy may be extended to those whose lives have been forfeited. We understand, the question which some months ago we ventured to conjecture might possibly arise in these cases,^b namely, whether the punishment of transportation could be legally substituted for a sentence of death, against the deliberate will of the party convicted, has actually become matter of serious consideration, and that some of the Common Law judges have been consulted on the subject. We are not in a position to state the result, but no doubt it will speedily be

^b See Leg. Obs. vol. 36, p. 497.

announced in what manner those entrusted with the administration of the law in Ireland are prepared to deal with persons who have subjected themselves to its severest penalty.

METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

THE following is a further part of the Annual Report of the Committee of Management made at the General Meeting of the 18th April. We are unable, for want of space, to give the whole report, but the sections into which we are dividing it will, we trust, enable our busy readers to give each part their best attention, and the exertions of the Committee will then be duly appreciated. We need scarcely add, that the approbation of the profession will be evidenced in the most satisfactory way by a large increase of the number of members. One pound a year is not much to invest towards the promotion of the objects of the Society.

ANNUAL REPORT OF THE COMMITTEE OF MANAGEMENT.

Changes in the Committee.

The Committee have to report, with deep regret, the death of one of their Members, Mr. Charles Jenings, a gentleman who, in the course of a long professional career, always maintained the very highest standing, who was one of the first to join the Association, and whom (until he was incapacitated by illness from attending their meetings), the Committee always found ready to give his valuable assistance in the labours incident to its establishment.

Acting upon the power entrusted to them of adding to their number, the Committee have, in the course of the past year, added the names of the following Provincial Members; Mr. Joseph Heron, of Manchester; Mr. John Namson, of Carlisle; Mr. Thomas Burn, jun., of Sunderland; and Mr. Joseph Radcliffe Wilson, of Stockton.

Supervision of the Profession.

In their Report last year, the Committee stated, that with regard to the very important subjects of the education and superintendence of the profession, they conceived that the course of this Association should rather be a steady and cordial support of the exertions of the Incorporated Society, than any separate line of action. Acting upon this principle, the Committee have, in the several cases of malpractice on the part of Attorneys, which have been brought before them by some of their Members, immediately put themselves into communication with the Incorporated Society, and, after furnishing all the information in their power, have left it to that

Society to take such active steps as might be deemed advisable. One or two of these cases are at present undergoing investigation; and the course thus adopted by the Committee, appears to have given satisfaction to the parties who furnished the first information. The Committee would impress upon their Members, and the Profession generally, that it is as important to guard against those evils that endanger the position of the Profession from within, as it is against those which threaten from without; and that the position enjoyed by the general body of Attorneys and Solicitors, and the estimation in which they are held, depend more upon themselves than upon any one else. The Committee are, therefore, anxious that the Members should feel it to be their imperative duty to bring to bear upon every case of unprofessional conduct the influence of the high tone of the Profession as a body; and where it may be necessary, the restraining arm of the Courts of Justice.

Status and Grievances of the Profession.

Considerable pains have been taken to ascertain the opinions and wishes of the Profession upon the various points which were mentioned in the Report last year, as grievances pressing heavily and unfairly upon Solicitors. For this purpose a paper was carefully drawn up, entitled, "Topics of Enquiry upon the Office and Status of Attorneys," and consisting of a series of thirty-eight questions, the answers to which would embrace the history of the Profession, showing its original functions, and the way in which they have been gradually modified; the privileges the Profession has enjoyed, those which yet remain to it, and those which it claims; the position which the Attorney and Solicitor ought to occupy in society, with a view to the public welfare; the grievances to which he is at present exposed, and the most practicable and expedient mode of endeavouring to remove them.

This paper has been printed and widely circulated through the Profession, and it has been twice sent to every Member of the Association. In regard to this matter also, the Committee have not met with that response which they thought they had reason to expect; very few gentlemen have taken any notice whatever of the subject, and still fewer have sent in any considerable amount of information: still, although the Committee are unable to say that the Profession has, as a body, spoken out upon the subject, yet they have, among themselves, collected a considerable amount of information, which may, at any favourable time, be rendered available for the purposes of publicity, or of bringing the state and position of the Profession before Parliament. The Committee are also prepared to make practical suggestions in order to remedy two grievances which they have themselves frequently felt.

Compulsory References.

It is a subject of frequent and just complaint, that the question whether an action shall be decided by the verdict of a jury, or by

the award of an arbitrator, which is one that ought to depend entirely upon the will of the client, guided by the advice of his Attorney, is in practice frequently decided in direct opposition to their expressed wishes; the Barrister and the Judge between them deciding, and frequently from motives of mere personal convenience, that the case shall be referred, after all the necessary expenses of the trial have been already incurred. This is not only an interference with the legitimate province of the Attorney, but it often occasions a serious amount of additional inconvenience and expense, which is a positive loss to the client, be the issue of his cause what it may. Without wishing to cast any unjust imputation upon the gentlemen of the Bar, it is obvious that if Barristers gained nothing by a case going before an arbitrator, one motive for their urging references against the wishes of their clients would vanish. Our professional brethren in the North not unfrequently act upon this hint, and if they are compelled to refer, insist in their turn upon the reference being to a Solicitor, and not to a Barrister, and frequently also dispense with the services of the Bar in conducting the case when it is before the Arbitrator; an arrangement which, at less cost, is quite as advantageous and satisfactory to the client, and which, if the Attorneys upon both sides agree to it, cannot be successfully resisted. But in addition to this, there is a large class of cases which are evidently better fitted for a reference than a trial, and the Committee would recommend their professional brethren to take into consideration the expediency of referring to one of their own body all cases which do not go to a verdict, except where the nature of the case seems to call for the peculiar experience of a member of the Bar. The weakness of this branch of the Profession consists, in a great degree, in the way in which they continually play into the hands of their competitors of a higher branch; and there is a palpable inconsistency in their at the same time complaining of being excluded from all posts of honourable distinction, for the benefit of the Bar, and especially from such as partake of a minor judicial character, and yet, whenever they have themselves the appointment of a person to fill a judicial position which is open to themselves in common with the Bar, almost invariably naming, or consenting to the nomination of a Barrister. Whether it arise from an excess of generosity, or from professional jealousy, it appears to the Committee to be equally an unwise and a suicidal policy.^a

Unqualified Persons.

Another grievance to which the Profession

^a We have heard the choice of arbitrators often adverted to; and remember in the "good old times" how often Mr. Lowten, the eminent solicitor and Clerk of Nisi Prius, was wont to sit as an arbitrator at moderate expense, and generally to the satisfaction of the parties. Mr. Gilbert Jones (solicitor of the Woods and Forests,) was another frequent Referee; and so was the City Solicitor for the time being.—ED.

is exposed, is the encroachment of unqualified persons upon what ought to be exclusively the functions of the regularly admitted Members of the Profession, and amongst these were noticed last year the class of persons who, without being subject to any preliminary apprenticeship or examination, become *Parliamentary Agents*, merely upon signing their names in a book kept for that purpose at the Private Bill Office, and attempt the performance of professional functions, for the due discharge of which an accurate knowledge of the Law of Real Property, as well as that of Evidence, is highly requisite.

Considering the way in which the Profession is on every side circumscribed by law, the Committee think they are entitled to demand, that no one, except a regularly admitted and certificated Solicitor, should be authorized to act as a Parliamentary Agent, whose duties of representation and advocacy before a Committee in Parliament, are, in point of fact, precisely similar to those of the Attorney and Solicitor in the Courts of Law. But until a rule to that effect has been adopted, the Committee would impress upon the Members, that the remedy is, to a very great extent, in their own hands; that they are the parties who generally choose the Parliamentary Agents; and that it is, therefore, their own fault if they recognize and employ any of those parties as agents who are not at the same time Solicitors.^b In the two instances here adverted to, it is plain that the Profession have only to adopt steps which are completely within their power, in order greatly to modify, if not entirely to put an end to, the evils complained of.

Annual Certificate Duty.

Another grievance of which the Profession loudly and justly complain is, the tax upon their annual certificates. This is a clear case of class oppression. Solicitors are not exempt from any taxes to which their fellow-subjects are liable. The number of the practising Profession remains almost stationary, while that of all other professions and businesses rapidly increases, with the continual increase in the business, activity, and number of the population; a fact which leads to the necessary conclusion that the average incomes derived from the Profession, when compared with those derived from other professions and businesses, so far from being, as is often taken for granted, excessive, are not even fairly remunerative. The tax was imposed during a time of war, when all classes were obliged to submit to extraordinary burthens; but, whilst the taxes which were at the same time, and for the same purpose, imposed upon other classes

^b We would urgently call attention to the redress of this grievance, which is evidently in the hands of the solicitors themselves. They ought to be ashamed of the complaints which they make of the inefficiency of the Law Societies, whilst they altogether neglect the most ordinary means of encouragement to their professional brethren.—ED.

of the community, have been, since the termination of the war, diminished, or entirely repealed, that upon the Solicitors has been even increased. In consequence of the discussion which the general taxation of the country is now undergoing, and the apparent probability that the Stamp Act, at any rate, will before long be entirely remodelled, the Committee have deemed the present a fitting opportunity for a strong expression of opinion upon the part of the Profession; more especially as they learnt that the Incorporated Law Society had been in communication with the Chancellor of the Exchequer upon the subject, and were prepared to co-operate with them in agitating the question. They have, therefore, taken active measures to present to the House of Commons the most unequivocal proofs, that in demanding the repeal of this tax, they speak the sentiments of the entire body of the Profession throughout the kingdom.

For this purpose, they have prepared a Petition, to be signed by each member of the Committee, which will thus bear the names of some of the leading Solicitors in all parts of the kingdom; and they have also put themselves into communication with Members of the Profession residing in 381 different provincial towns for the purpose of eliciting the views of the Profession, and if they should agree with those of the Committee, of having similar Petitions prepared, and ready to be presented, in order to support the member who may be entrusted, on behalf of the Profession, with the duty of bringing the subject formally before the House. The Committee are happy to say, that in this movement they have been warmly responded to by the Profession, the Petitions in general having been signed by every member residing in the towns from which they emanate. Many of them have been entrusted to the local Members of Parliament for presentation, and 133 of these Petitions, signed by 1,197 members of the Profession, are now in the hands of the Committee, ready to be employed when arrangements are completed for the motion to be made in the House.

The Committee would further impress upon the members, that the success of any movement of this kind must in a great measure depend upon the degree in which the personal and professional influence of the members of the Profession is brought to bear upon the local members of Parliament. The cause of the Profession in the House will not be supported by that pressure from without, which has so much effect in questions upon which the sympathies of the public are strongly excited.

In a few instances, it has been suggested to the Committee that the tax operated as a safeguard against the admission into the Profession of improper parties; but the Committee are of opinion that this is a mistaken view of the subject.^c The argument implies, that of

the parties who seek to enter the Profession—those who have 8*l.* or 12*l.* a year which they can afford to throw away, are, as a rule, the most likely to be respectable and eligible members of it, and that those upon whose pecuniary means the tax presses most severely are likely to be those whom the Profession could best spare. The Committee conceive that such a line of distinction is sure to work unjustly, excluding, or severely pressing upon the resources of, many who might be an ornament and an honour to the Profession, and admitting others whom, for the sake of the character of the Profession, it would be highly desirable to exclude. The least eligible Members of the Profession are by no means always the poorest.

But, again, while the Committee feel that the tax is not calculated to act as that safeguard of the Profession, which all parties acknowledge to be so desirable an object, so they also deem that there are two other methods of pursuing that object, which are perfectly legitimate, and well adapted for its attainment: first, an increased strictness in the examination to which candidates for admission into the Profession are subjected; and, secondly, the regular practice of bringing to bear upon the conduct of those who are its Members, a high tone of public professional feeling. As has been already stated, both these subjects are peculiarly within the province of the Incorporated Society, with whom the Committee are anxious at all times cordially to co-operate, in any measures that may be deemed likely to maintain or to raise the standing of the Profession.

Amendment of the Law.

Previously to the former Annual Meeting, the Committee had devoted considerable time and labour in collecting and arranging lists of the principal points in which their experience as Legal Practitioners had taught them that the law required amendment; and these were adverted to in the last Annual Report, under the different heads of Equity, Common Law, and Conveyancing. In addition to these, the Committee have, during the past year, directed their attention to the Bankruptcy and the Ecclesiastical Law; and for the consideration of the latter, a Special Sub-Committee has been appointed. In selecting the subjects to which they should devote their principal attention, the Committee have felt it necessary to be guided in some measure by the fact, that the whole subject of Law Reform is one which is daily attracting a larger portion of public attention; and that, by observing the points to which the attention of Law Reformers was being generally directed, and by endeavouring to assist and modify, rather than to lead, they would be more likely to effect some real improvement, than by considering merely what, judging from their own point of view, they should have thought to be most needed. The latter course might, perhaps, tend to bring the Association more prominently before the

^c See *Richards v. Lord Suffield*, 17 L. J. rep. N. S. Ex. p. 393.

public; but the Committee felt that their duty was merely to consider how they might best contribute towards the actual attainment of some real improvement.

Equity Reform.

Guided by these considerations, the Committee have directed a large portion of their attention; during the past year, towards a reform of the Courts of Equity, and especially of the Masters' Offices. They first embodied the recommendations of their Sub-Committee, which were mentioned in the Report of last year, in a Memorial to the Lord Chancellor, which, after being presented to his Lordship, was circulated amongst the Judges and officers of the Courts, and the leading Equity Counsel. A Deputation from the Committee had interviews upon this Document with the Lord Chancellor, the Master of the Rolls, and the Solicitor-General, in all of which the various points were discussed *seriatim*; and the Committee are glad to say that their views almost invariably met with the concurrence of all those important Functionaries. The Committee next proceeded to frame Bills to carry out some of the most important of the improvements, for which the way had been thus prepared. Two Bills accordingly have been now drawn: one to enable suitors in Chancery to proceed by Petition without Bill, and the other to give primary jurisdiction to the Masters in ordinary in certain cases; the cases contemplated being, the administration of the estates of deceased persons, and of trusts, and such other cases as the Lord Chancellor may direct. In order that these Bills should be thoroughly considered in detail as well as in principle, and that when introduced into the House they might encounter as little opposition as possible, copies of them have been placed in the hands of all the Members of the Equity Bar who have seats in Parliament, with an invitation to communicate to the Committee suggestions for any modifications which might be considered advisable. The Committee entertain strong hopes that these measures may pass into law in the course of the present Session; and should they do so, the Committee believe they will be found to confer a boon alike upon the Profession and the Public, (whose interests indeed can never be really at variance,) by introducing cheap and expeditious modes of obtaining the judgment and protection of the Court in numerous cases, which, under the present system, are obliged to be settled by forced and unfair compromises, owing to the enormous expense and delay of Chancery proceedings. The Committee are also engaged in preparing a third Bill to regulate the proceedings in the Masters' Offices, both on orders of reference made in suits in Court, and in those cases where it is proposed to give the Master primary jurisdiction. The provisions of this Bill require the most careful and minute consideration; but the Committee have so far prepared its outline, that they trust that it will be also introduced into Parliament, under the

sanction of the Law Officers of the Crown; before the end of the present Session.

Should they be successful in passing these Bills, the Committee propose to follow them up by others, or by applying for general orders to carry out all the recommendations contained in the report of last year.

Removal of Equity Sittings to Lincoln's Inn.

The Committee watched with great interest the steps which were taken by the Members of the Bar to induce the Lord Chancellor to remove the sittings of the Equity Courts, during the Parliamentary recess, to Lincoln's Inn, and they prepared a Memorial to his Lordship in support of the proposed measure; just as they were about to present it, however, the Order of his Lordship appeared regulating the future sittings of the Court as the Committee desired.

Reforms proposed by other Parties.

The Association is calculated to be of service to the Profession, not only by originating measures of Legal Reform; but, perhaps, even still more so, by bringing to bear the experience of Practitioners upon the measures which are continually proposed by other parties. The Committee are glad to say, that in some high and influential quarters their claims in this respect have been listened to and admitted; and during the past year they have, on various occasions, been consulted by influential persons, not belonging to their own body, upon the principles and details of various measures of Law Reform which have been, or are intended to be, submitted to Parliament. The Committee feel that it is only by such a course that measures of Law Reform can be preserved from the evils of complexity, inconsistency, and impracticability, which have of late years been too frequently their characteristics. They rejoice to see that at length an important step has been taken in the right direction; and they feel confident that by acting fearlessly and consistently upon the principle, that it is for the interest of the Profession as much as for that of the public that justice should be administered at once soundly, speedily, and economically, they will be at the same time, promoting the interests of their Clients, and raising the standing of their own Profession.

Stamps on Transfers of Mortgages.

In other branches of the Law, the Committee have continued to accumulate facts, with a view to take advantage of any opportunity that may present itself for furthering the various reforms suggested last year. In the department of Conveyancing, their attention has been drawn to the numerous and conflicting decisions of the Courts with regard to the necessary stamps for the transfer of Mortgages, which have left the law in such a state of doubt at present, that in some cases it is not possible for a practitioner, even though acting under the advice of the Solicitor to the Commissioner of Stamps, to be sure what is the proper stamp to affix

upon his client's Deed. The Committee prepared a short Bill to remove these difficulties for the future, and they have inserted a clause to exempt from the usual penalty, parties who have *bond fide* intended and sought to place upon their Deeds the right stamps. This Bill, relating, as it does, to a system of the utmost complexity, as is shown by the accumulation of cases which have arisen upon it, requires the greatest care in framing, and its provisions are still under consideration; but the Committee have every hope of being able to render it unobjectionable to the Government authorities, in which case it will meet with no opposition, and will confer an important relief upon the Profession and upon their Clients.

Revision of Stamp Act.

The Committee have reason to hope, that before long, the entire Stamp Act will be revised, so as, among other improvements, to diminish the burdens which, at present, press very heavily upon Conveyancing transactions of small amounts.

Usury Laws.

The Committee have likewise directed their attention to the subject of the Usury Laws, and are of opinion that the time has come to seek their total repeal. The Usury Laws have, from time to time, been relaxed in all those cases where their pressure has been felt, until they are now in this curious position, that having been repealed wherever the arguments by which they are usually defended could apply, and wherever they have been really operative, they remain in force only in the case of real property, where those arguments were always least applicable. It is only of late years that their operation upon landed security has begun to be felt, for, formerly, the ordinary rate of interest for which money could be obtained upon such security, was below that which the law permitted, and this is still the case in many parts of the country; but in many others, the high interest that can now be readily obtained on other and eligible investments, has had the effect of rendering it impossible to procure money upon some kinds of real security, especially upon buildings, except at a rate of interest somewhat higher than that permitted by law; and thus one of two things must happen,—either the law is evaded, as is done every day to a great extent, and it is a course which is alike prejudicial to the public and to the Profession, or business is paralyzed, and while one very important branch of Professional business is crippled, loss, if not ruin, is inflicted upon the client. The Committee feel that it would be more consistent with recent legislation to leave the borrowers and the lenders of money upon land and house property to make their own terms, according to the existing state of the market, and without any legislative interference; and they propose to take an early opportunity of urging their views upon Parliament.

General Registration.

The Committee are likewise engaged in providing themselves with the means of showing what is the prevailing opinion of the Profession upon the subject of a general Registration of Lands; and for this purpose they have placed themselves in communication with all the Provincial Law Societies, and with some hundreds of their professional brethren throughout the kingdom.

If their hands are efficiently strengthened by the expression of opinion thus sought, they trust they shall be enabled to assist in guiding the course of Conveyancing Law Reform into a channel that will be beneficial to the public, without being detrimental to the Profession.

Common Law.

In Common Law, the Committee have not perceived any favourable opportunity of urging the amendments which they are prepared to recommend, but they have prepared a short Bill to provide for the removal of Judgments, Decrees, and Orders, from the Superior Courts of England to those of Ireland, and from those of Ireland to those of England; as a first attempt to remove an obvious imperfection in the existing judicial system of the country, and remedy a serious evil, which is nevertheless one of daily occurrence, arising from the strict limits within which the jurisdiction of the several Courts is confined. The Bill has received the sanction of a noble and learned Lord of high legal standing, who has undertaken to present it to the House of Lords. The Committee will continue carefully to record the suggestions they may receive from the members, and to watch for any sign that more active steps would have any chance of being successfully pursued.

Ecclesiastical.

As already intimated, a Sub-committee has been appointed to attend to the subject of Ecclesiastical Law; and here, too, the Committee feel that at present they can only be usefully employed in preparing for future proceedings, for having in July last applied to her Majesty's Secretary of State for the Home Department, to favour them by receiving a deputation upon the subject, the Committee were informed in reply, that no measure regarding the Ecclesiastical Courts was in contemplation.

The Committee feel strongly that this is a subject of the utmost importance, and one that ere long must be actively dealt with, but at the same time they believe that the previous enactment of the reforms they are seeking to effect in the Court of Chancery will do more than anything else to facilitate a satisfactory settlement of the questions regarding the Ecclesiastical Court.

The next section will contain the remarks of the Committee on the various Law Bills before parliament since the last Annual Meeting.

THE BANKRUPT LAW CONSOLIDATION BILL.

ARRANGEMENTS BETWEEN DEBTORS AND CREDITORS.

THE following able statement, in support of the proposed amendments of this part of the bill, has been prepared by the Council of the Incorporated Law Society.

For many years, on failure of commercial houses, Compositions or Liquidations under Inspectorship (and sometimes Deeds of Trust) have been preferred to Bankruptcy; and it is said that out of 120 commercial houses, large and small, who suspended during or in consequence of the crisis of 1847, only nine went into the "*Gazette*."

Of these nine, it is well known that the two largest were driven into the "*Gazette*" contrary to the general wishes of very large majorities of the Creditors, because the Partners very properly refused to allow Creditors forming a most inconsiderable minority (who had brought actions) to obtain thereby a preference over other Creditors.

It has been felt for years, by those who have been concerned in those matters, that it is a great grievance that a single Creditor of even 50*l.* may, contrary to the wishes of all the other Creditors, drive the affairs into an Administration by Bankruptcy, when the Creditors, as a body, may prefer another mode of Administration. There is no remedy to prevent the Creditor from frustrating the preferred mode of Administration, unless the Debtor, by assistance from his friends or out of the Assets, pay the Creditor either in full or by some better payment than given to the other Creditors.

It is said that it would be a hardship to an individual Creditor to tie his hands and deprive him of his undoubted legal right to go to the Bankrupt Court, and that there would be tyranny in allowing a majority to bind a minority; and this appears to be the doctrine held by the Commissioners and Official Assignees of the Bankruptcy Court. But the undoubted legal right to drive a Debtor to Bankruptcy ought to be subject to control, just as much as in Bankruptcy the undoubted legal right of a Creditor to sue at Law and get Judgment and Execution, is necessarily controlled, and nobody thinks it a tyranny that it should be controlled.

Both the right to sue and the right to drive a Trader to Bankruptcy, ought to be restrained if it becomes necessary for the purpose of obtaining a better course of Administration, or one which the majority prefer.

The decision of an overwhelming majority always has been, and must be, the best criterion on which to decide, in each case, what is the best mode of Administration; and in most relations of life a majority has always had the right of deciding, and this principle is recognized in the Bankrupt Act of 6 Geo. 4, c. 16;—s. 133 of which gives to nine-tenths of the

Creditors the right to supersede a fiat actually issued, although from the imperfect wording of such Section the power is rendered substantially inoperative. As the Law stands at present, a very small minority has the power of tyrannising over the overwhelming majority by proceedings at Law, because a Creditor is not bound by the decision of those most largely interested in the concerns.

This tyranny has been exercised in a way much to be regretted. Creditors not influenced by any honest feeling, but merely being more hard or less scrupulous than others, have got payments which they ought not to get, or have annoyed the other Creditors, and sacrificed their interests by driving matters to Bankruptcy. In spite, however, of this infirmity, a very large number of estates have been kept out of the Bankruptcy Court. And the Bankruptcy Court need not be tenacious in supposing that the removal of this infirmity of the Law would unduly injure and decrease the business of the Court by keeping more estates than at present out of its jurisdiction.

At all events, the Bankruptcy Court is not entitled to any consideration in the question, if this decrease of business arises from the restriction of a power which is used improperly, and either obtains for the Creditor an undue preference, or deprives the large majority of Creditors of that mode of administration which such majority by its adoption of it shows it considers to the benefit of the Creditors generally.

To prevent the minority exercising this tyranny, it is proposed to give an adequate majority the power of binding the minority; and provided the amount of such majority as fixed by the law be decidedly overwhelming, it appears much more just and less tyrannous that it should have the power to carry out its own Administration, than that a small minority of 50*l.* or 100*l.* only should have the power to drive matters to Bankruptcy.

It is felt also that there would be an advantage in destroying the hopes of the class of individuals who at present lie by, until the liquidation has proceeded to a sufficient length, and then avail themselves of the existing state of the Law, solely for the purpose of extorting a preference over other Creditors.

Where there is a legitimate ground of Bankruptcy owing to there having been misconduct, which ought to be the subject of inquiry in a Court, the affairs naturally go into Bankruptcy at an early period after the stoppage.

There have, indeed, been instances where there has been such misconduct, and its existence has been publicly known, and yet the creditors have felt it for their own interest to take a composition, or to administer under inspectorship or otherwise, out of Court.

But it must always be borne in mind, on the consideration of this subject, that it is not to be viewed as a matter at all of *criminal* jurisprudence. The Bankruptcy Court has certain powers of punishment, which give it a character of a Criminal Court, but still substantially its true duties are purely those of administer-

ing the Bankrupt's Estate to the best advantage to the Creditors; and what is the best advantage to the Creditors in each particular case, can be better decided by the Creditors themselves than by Commissioners.

The objections which have been started as to the mode of carrying out the principle are,—

1st. The difficulty of ascertaining the majority.

2nd. The possibility of a fictitious majority being created by a fraudulent debtor, expressly to secure him the benefit of this Act.

Before any observations are made on these objections, it will be desirable to explain the character of the proposed clauses.

These clauses are intended to apply solely to the Administration of Estates by Creditors themselves, without any intervention of any Court or official person whatever.

They will practically assist the Administrations of large houses under inspectors, or of smaller tradesmen under trust deed, or deeds of composition.

They introduce no new mode of legal proceeding or administration, and they have no other object and effect than to carry out the principle which has been already explained, viz.: That any mode of liquidation adopted by a proper majority shall be binding on the minority, and shall not be frustrated by such minority.

It is most necessary that it should be distinctly understood, that those who advocate these clauses also strongly deprecate any liquidation, which is partly under the jurisdiction of a Court and partly to be conducted by creditors out of Court.

They conceive that there ought to be but two characters of Administration; the one entirely in Bankruptcy and in the Insolvent Court, the other entirely out of Court, as in cases of inspektorships, trust deeds, and compositions.

It is thought that the compound of the two systems necessarily forms a mongrel system, which will have all the formalities and expense of a Bankruptcy, and none of the advantages of an Administration out of Court.

Those who advocate this mixed system may support the clauses at present in the Bankruptcy Bill, but it should be distinctly understood, that it is no interference of any Court in the administration of estates that is wanted by the framers of the clauses in question, and therefore that the clauses in the Bill are not such as will in any way meet the views of the framers of these additional clauses.

All the assistance that is wanted is, that a power shall be vested in some competent Court to ascertain, in case of question, whether the proper majority of Creditors have agreed to the mode of liquidation proposed.

That fact being established, the mode of liquidation is to be continued, without the intervention of any Court in the Administration, so long as it is duly conducted according to the Deed.

If it fails to be established, the dissenting Creditor may have his way in driving the affairs into Bankruptcy.

But, in the Administration itself, it is not contemplated that the Bankruptcy or any other Court should at all interfere.

If all the Creditors of a failed House assent to any mode of liquidation, it requires no interference of any Court to conduct that liquidation. If the parties—whether Debtors, Trustees, or Inspectors—who engage to conduct the liquidation break their engagement, they are amenable to a Court of Justice, and are made further amenable by these clauses. But it requires no assistance from a Court to conduct the ministerial or mechanical part of the Administration. All that is wanted is, to put an arrangement, assented to by the proper legal majority, on precisely the same footing as if the arrangement were assented to by all the Creditors.

This is the whole scope of the clauses; and might have been carried out by a single clause, were it not for the desire, which all parties have felt, that every protection should be given to Merchants and Tradesmen, so as to prevent these clauses being in any way used in a fraudulent manner.

The clauses are then set forth, and the Council observe on the mistake of supposing that the Bankruptcy Court should have the attributes of a Criminal Court as a primary object of its jurisdiction.

Upon the two objections already stated only a few observations need be added.

As to the first, viz., the difficulty of ascertaining the true majority, the whole responsibility rests upon the trader, and in each case he must get over the difficulty as well as he can. But in truth it will be found that there are a very few cases in which there will be any real doubt about the majority one way or other. Even if we take so high a standard as nine-tenths in number and value, it will rarely happen that it will become a nice point of calculation.

All these arrangements have been usually concluded by there being one common feeling of an overwhelming majority; and if the dissentients are in number considerable (and the fact is very soon known,) the trader is satisfied, at once, that he has no alternative but the "*Gazette*."

It is only against an inconsiderable majority that legislation becomes necessary; and provided the majority required by law is not made unreasonably large, no question of minute calculation is ever likely to arise.

The second objection is of a more specious and striking character, but on investigation is really not entitled to any greater consideration than to protect against its mischief, however improbable and remote.

As the objection is now understood, it is:

That we are legislating only for large estates, but that if this law passes there will be a class of small tradesmen who will concoct false majorities either by fabricating false debts or by incurring debts with innocent persons, for goods sold shortly before the stoppage, and by

means of such goods paying a dividend to creditors, which may include creditors existing before such goods were bought, and by means of such payment inducing such old creditors to form a majority to accept a compromise, which will prevent the new creditors from having justice.

It is not likely, and almost impossible, that either of these cases would arise if the majority required is very large. As to the first kind of fraud, it is perhaps a sufficient answer to say, that a tradesman who concocts a false majority, thereby, when discovered, loses his release, and it would be difficult to concoct a majority by means of such debts alone; and as to the second kind of fraud, it may also be observed, that the creditors who have to complain of the fraud, by seeing that which was their property divided amongst other creditors with themselves before it is paid for, are subject to the same consequences now in bankruptcy.

However, in order to guard against this result (however unlikely to happen,) it is proposed that no arrangement assented to by the majority shall be conclusive and binding on the minority until a fixed period after the stoppage of the trader.*

Three months has been suggested as being a proper period.

There never was a suspension of payment in which the creditors had not in three months ample time to learn and make known their grievances, or of knowing the real state and prospects of the estate. The assent of the creditors to any proposition cannot be obtained except by an application to each, and it is clearly known in a few weeks whether the trader has or has not the confidence and respect of his creditors sufficiently to justify their trusting to any arrangement to be made out of the Bankruptcy Court, and whether one or other mode of administration is best for the Creditors.

By fixing this period of three months, therefore, a Creditor could not be liable to be cheated by his Debtors getting a packed majority to agree to an arrangement which would bind them; because they could defeat such majority at any time during the three months by compelling the trader to go into the "*Gazette*," unless, indeed, such trader was enabled to satisfy his demand.

There is no difficulty, under the law at present, in making a man a Bankrupt in a few weeks. Any reasonable man, being a Creditor of a Trader, would know, if the Trader made no proposition to himself, that he was trying to get a majority behind his back, and would take his own course within the period fixed; or, if he did not, he would have only himself to blame. It was thought, by fixing a period in this way, that during such period the affairs would remain in uncertainty, and that the Trader might be making away with all his property if a dishonest man, or, if an honest man, might be delayed in coming to a satisfactory settlement.

It will be seen, on consideration, that neither alternative can really arise, or has any weight in the question.

If a Trader is not made a Bankrupt by his Creditors immediately on his stoppage, he is, under existing law, and by the very nature of things, either left in the dominion of his property himself, or his property is in some way under the control of his Creditors; and this can only take place where there is confidence in his honesty. If the law passed, as proposed, the same state of things exactly would exist.

The Trader must either by the assent of his Creditors be left in possession of the Assets, or must put the Assets in a position satisfactory to the Creditors.

He must get then the assent of his Creditors by degrees to his proposal of liquidation, whether by Compromise, Deed of Trust, or Inspectorship.

If it be by Compromise, he retains the property to pay the Compromise; if by Deed of Trust, he gives dominion over the property to the Trustees as soon as the Trust Deed is executed; if by Inspectorship, he retains the possession of the property subject to the control of the Inspectors.

It rarely happens that the arrangements are assented to by a sufficient number in less than three months, but in the meantime no difficulty stands in the way of collecting debts due, or realising property, except where there is an Assignment in Trust executed by the Trader, which under the existing law is an Act of Bankruptcy, and therefore makes it difficult for a Trustee to give sufficient discharges, because his very title is an Act of Bankruptcy, of which every Debtor paying him, has notice; practically the three modes of administration will be at the onset conducted alike, that is to say, the Debtor must first get his Creditors' assent, and in the meantime will remain in full power to realise the property.

If a Trust Deed is proposed, he must get a proper amount of his Creditors to sign the Deed before he himself signs it, and in the mean time he is competent to collect his debts and realise his property himself.

In every case, therefore, it appears to be sufficient to give the Trader the power before the expiration of three months to go to some Court, and to show that he has a sufficient majority, and therefore to make the arrangements complete and binding within the Act, although the three months have not expired.

Such a power appears only necessary with a view to the payment of dividends, and, possibly, in case of a Trust Deed, in order to give it a conclusive validity and to prevent its being an act of Bankruptcy. This power it is proposed to give.

We are unable at present to make any further extracts from this important document, which appears completely to exhaust the subject, and answers every possible objection to the proposed amendments.

* This is now provided by the second clause.

CANDIDATES WHO PASSED THE EXAMINATION.

Easter Term, 1849.

<i>Names of Candidates.</i>	<i>To whom Articled, Assigned, &c.</i>
Allison, William	William Grant Allison, Louth
Amys, John Dunham	Frederick Harrison, Bloomsbury-square; William Taylor Prichard, Newgate-street; William Belton Crealock, Regent-street
Armstrong, George	Edward Hall, Newcastle-on-Tyne
Bamford, John	John Fox, Ashbourn
Bardwell, Everett, jun.	Everett Bardwell, sen., Norwich
Bastard, Richard	Richard Every, Exeter
Batham, James	William Brinton, Kidderminster
Bennet, William, jun.	William Bennet, Chapel-en-le-Frith
Blackmore, William	John Lambert, Salisbury
Boggie, John	Septimus Booker, Liverpool
Bone, Robert William	Allan Belfield Bone, Devonport
Brewster, John	Joseph Radcliffe Wilson, Stockton
Barton, John Francis	Frederick Barton, Lincoln; Charles Davison Scott, 7, Furnival's-inn
Challis, William	James Brooks, Basingstoke
Chandler, Thomas Whitty	Benjamin Chandler, jun., Sherborne
Conworth, Job, jun.	Thomas Bigsby, East Retford; John Mee, East Retford
Corles, William	Edward Corles, Worcester
Cox, Henry	Charles Arthur Dodd, late of 5, Billiter-street; Thomas Grueber, 5, Billiter-street
Croft, Richard Tompsett	Charles Parsons, Temple-chambers, Fleet-street
Crosby, Timothy	Thomas Henry Faber, Stockton
Dawson, William	Benjamin Field, 4, Lincoln's-inn-fields
Deakin, William	Thomas Hill, Birmingham
De Carteret, John Duniere	John Edward Elworthy, Plymouth; Daniel Alexander Freeman, 34, Old Jewry
Douglas, Robert	Edward Willoby, Berwick-on-Tweed
Drage, William Henry	Zachary Brooke, New Boswell-court
Dryland, Robert Coster	George Gray, Newbury
Emmet, William Henry	Charles Firth, Bristol; Finlay Knight, 14, Bloomsbury-square
Farrer, William James	William Loxham Farrer, 66, Lincoln's-inn-fields
Fereday, Richard William	George Robinson, Wolverhampton
Ganet, William Henry	Matthew Gaunt, Leeds
Gilbertson, William	Joseph Bray, Preston
Goodere, John Henry	Henry Lloyd Harries, Llandovery; David Lloyd Harries, Llandovery
Goodman, Charles Samuel	George Marshall, Berwick-on-Tweed
Hall, John William	John Tanner, Spekehamland
Hall, Joseph	Felix John Hamel, Tamworth; John Shaw, Tamworth
Hallett, Frederick Hughes	Robert Furley, Ashford
Haynes, Robert	Alfred Robinson, 17, Orchard-street, Portman-square
Hayward, William	John Hayward, Hissland and Oswestry
Hearn, William	Thomas Hearn, Buckingham; Samuel Berridge, Leicester; Clement Tudway, 1, John-st.; George Lewis Phipps Eyre, 1, John-street
Holt, William	George Wells Holt, Great Yarmouth
Hooker, Ayerst	Knowles King, Maidstone
Hopgood, John	James Hopgood, 14, King William-street, Strand, and 3, Lyall-st. Belgrave-square
Hudson, Alfred Ricketts	Edmond Wells Oldaker, late of Pershore, now of Stratford-on-Avon; Edwin Ball, Pershore
Jewitt, Frederic Hardy	James Watson Jewitt, 45, Lime-street
Johnson, John Henry	Thomas Harrison, Kendal
Jones, Benjamin William	Septimus Davidson, Weavers'-hall, 22, Basinghall-street
Jones, John	John Trevillian Jenkin, Swansea
Longelyn, Charles	George Lucas, Great Yarmouth; Charles Ranken, Gray's-inn
Longman, Thomas Coster	James Percy Phillips, 10, St. Swithin's-lane
M'Alpin, Daniel	Simon Ewart, late of Carlisle; George Mounsey, Carlisle
Mence, William, jun.	John Parker, Worcester
Mounsey, Ewart Simon	James Mounsey, Carlisle; George Mounsey Gray, 9, Staple-inn
Nedham, Thomas Stanley	Halford Adcock, Leicester; Henry Parker, 17, Bedford-row
Radford, Edward Vaughan	Henry Radford, Atherstone
Randall, Thomas	John Randall, 10, King's-beach-walk, Temple
Richards, George Seale	George Whateley, Birmingham
Rogers, William	Thomas Harrison, Kendal
Sheppard, Francis John	Richard Sheppard, Wells
Stewler, Robert Francis	Joseph Lucas, 1, Trinity-place, Chasing-cross
Smith, William Thomas	Robert Weddell, Berwick-on-Tweed
Speckman, George	Richard Travers Way, Bradford
Stow, Ambrose	John Henry Cromwell Russell, 8, Gray's-inn-square; William Ralph Buchanan, 8, Basinghall-street
Stringer, Joseph	William Stewart, formerly of Harbury, now of Wakefield

Symons, Richard James Edward	Richard Symons, Wadebridge
Taylor, John	William Fretwell Hoyle, Rotherham
Templer, Charles James	John Geare, Exeter; John Sims Weir, 27, Nicholas-lane
Templer, Reginald William	Henry Karalske, 4, Carlton-chambers, Regent-street; Charles Fletcher Skirrow, 1, Bedford-row
Tompsett, John	Joseph Lucas, 1, Trinity-place, Charing-cross
Trenerry, John Griffiths	Matthew Perkins, Bristol
Wall, Richard Wall	Robert George Smith, 5, New-inn, Strand
Ward, Thomas Robinson	Thomas Chubb, Malmesbury
Watkins, James	James Kyrke Watkins, Bolton-le-Moors
Watts, Robert Jack	John Elliot Wilson, Cranbrook
Westall, Thomas	John Evans, 32, Southampton-street, Covent-Garden; Joseph Raw, 5, Fumival's-inn
White, Alexander Miller	Henry Griffin Dean, the Rookery, Colchester
Whitley, Edward	Matthew Dobson Lowndes, Liverpool
Williams, Griffith	Edward Owen, Dolgelly; William Jones, Crosby-square
Williams, Isaac	John Taylor, Southstoke and Bath
Wills, William	Thomas Bolton, Wolverhampton
Wood, Henry Eycott	Henry Harris, Cainscross, near Stroud
Woodhouse, Thomas	John Woodhouse, Bolton-le-Moors
Wooler, Octavius Borradaile	William Rymer, Darlington
Worship, Starling Day	William Worship, Yarmouth; George William Andrews, Sudbury
Wright, Herbert	Edwin Wright, Birmingham
Young, Henry Wells	Robert Young, Battle; John Joseph Field, 95, Guilford-street, Russell-square

ATTORNEYS' CERTIFICATE DUTY.

[We are glad to hear that Lord Robert Grosvenor arrived in this country on Tuesday last, and we understand that the Incorporated Law Society lost no time in applying to his Lordship to take the charge of the Bill for the Repeal of the Certificate Duty on Attorneys, and to fix an early day for bringing in the measure.

It will be observed, at p. 42-3, *ante*, that

the Metropolitan and Provincial Law Association has energetically seconded the exertions of the Incorporated Society, and that 133 petitions are now in the hands of the Committee, ready to be employed when the motion comes on.

The members of the profession should, in their several districts, remind their representatives of the just ground of their claim, and ensure their attendance at the time appointed.

RECENT DECISIONS IN THE SUPERIOR COURTS:

AND SHORT NOTES OF CASES.

Lord Chancellor.

Attorney-General v. Monro. May 4, 1849.

TAXATION OF COSTS.—THIRD COUNSEL.

Upon taxation of costs between party and party, held, that the general rule was to allow only two counsel; and that to justify a departure from that rule it was necessary to show that the case was of great importance or difficulty.

THIS suit related to the Scotch Church in St. Peter's-square, Manchester, and was heard in the first place by the Vice-Chancellor Knight Bruce, and afterwards on appeal to the Lord Chancellor, when the appeal was dismissed with costs, to be taxed as between party and party. Three counsel, Bethell, Russell, and Little, were heard on the appeal, the two latter only having been retained in the Court below, and the costs had been increased

to 400*l.*, the fees to Mr. Bethell being about half the sum. The Master had allowed these costs, and the Vice-Chancellor Knight Bruce had refused to disallow such taxation, whereupon this appeal was presented.

Rolt and Selwyn, for the appellant, urged that the rule was to allow only two counsel in ordinary cases, and that no extraordinary circumstances were shown to take the present case out of that rule.

J. Russell and Little, for the respondent, contended that the case was of great importance and justified the retaining of a third counsel, citing *Attorney-General v. Drapers' Company*, 4 Beav. 305; and *Smith v. Earl of Effingham*, 10 Beav. 378.

The Lord Chancellor said, that the general rule in the taxation of costs between party and party, was to allow only two counsel in ordinary cases. In the House of Lords two counsel only were heard on each side, but in Chancery there was no limit as to the number, and it

would be unjust to burden the losing party with the costs of the employment of all the counsel. In the *Attorney-General v. Drapers' Company*, cited at bar, an additional brief was to be allowed where the Attorney-General was personally concerned, although not counsel in the cause. The importance or difficulty of this case was not such as to justify a departure from the ordinary practice of the Court, and the Master must, therefore, disallow the costs of retaining the third counsel.

May 5, 8.—*London and North-Western Railway Company v. Smith*—Appeal dismissed.
— 8.—*Goodall v. Gawthorn*—Part heard.

Rolls' Court.

Attorney-General v. Rees and others. April 30, 1849.

EXCEPTIONS TO ANSWER FOR INSUFFICIENCY.

Upon exceptions to the Master's report finding that the defendants in an information to restrain the working of certain coal mines under the shore of a river, between high and low water-mark, were not bound to make inquiries of their agents as to the matters inquired after by the interrogatories: Held, that the defendants were bound to make the inquiries if they could not answer as to their knowledge or belief; and exceptions to the answer for insufficiency allowed on the ground of such omission.

THIS suit was instituted by the Crown, to restrain the working of certain seams of coal or culm existing under the shore, below high-water mark, in the Bury River, Carmarthenshire. It appeared that the Port Colliery Company had obtained leases of certain land in Pembry parish, adjoining the Bury river, with power to work the seams of coal and culm, and the company had sunk a shaft for that purpose. The bill alleged that the line of high-water had been removed lower down the sea shore by certain embankments and other works which had been formed with their sanction, and that large portions of the land formerly covered by the sea had become dry land; and that the company had taken a quantity of coal and culm from under the shore below high-watermark. The bill then prayed that the right of her Majesty to such sea shore and all veins or strata of coal thereunder might be declared, and that any licenses to raise such coal or culm might be declared void.

The defendants, in answer to certain interrogatories whether the present workings of the company were not under the sea shore to the seaward of high-watermark, and whether they had not raised and disposed of coal from the veins of coal under the sea shore between high and low-watermark, said they could not answer the same as to their knowledge or belief. Exceptions were taken for insufficiency, but

the Master, upon reference to him, found the answer sufficient, whereupon exceptions were taken to the Master's report.

The *Solicitor-General*, Turner, and *Maule*, in support of the exceptions, contended that if the defendant could not answer the interrogatories as to their knowledge and belief, they were bound to obtain the necessary information from their agents.

Malins and *Henshaw*, contra.

The *Master of the Rolls* held, that the answer was insufficient, and allowed the exceptions to the Master's report taken by the *Attorney-General*,—the defendants to have six weeks' time to put in their further answer.

May 5.—*Attorney-General v. Corporation of London*—Order as to costs.

— 7.—*Dobbs v. Goren*—Receiver's account ordered—Reference as to necessary repairs.

— 7.—*In re Rayner*—Taxation of costs refused, as more than a year had elapsed and no special circumstances were shown.

— 3, 4, 5, 8, 9.—*In re Burchell*.—Cur. ad. vult.

— 8, 9.—*Leith v. Bishop of London*—Stand over.

Vice-Chancellor of England.

Peto v. Peto. April 29, 1849.

FAMILY ARRANGEMENT.—CONTINGENT GIFT.

Certain property was given amongst such of eight children as should be alive at the death of the mother, and family arrangement deeds were agreed upon to provide that the children of any child dying in the mother's life should take the parent's share, but was not executed by all—some being infants and others abroad—one, however, absolutely refused. A party to the deeds, who had signed, died leaving children. A petition by them to divide the property into seven parts, and to give one-seventh to the refusing party, and to divide the remaining six-sevenths into seven parts, one of which to go to the plaintiffs, was dismissed, on the ground that the parties to the deeds contemplated an equal division, and that the other parties would be placed thereby in a worse position than they would have been in had they all survived the mother.

THE testator, Henry Peto, directed, by his will, the residue of his estate to be divided into five equal parts, two of which he gave to Thomas D. Grissell and Ann his wife, and unto, between, and amongst such of their children as should survive the said Ann. There were eight children, and as the gift was contingent upon the death of Ann, deeds of arrangement were entered into in April, 1832, to which all were made parties, in order to provide against the contingency of either of them dying in their mother's lifetime leaving

children, so that such children might stand *in loco parentis* and take their parent's share. James, one of the children, absolutely refused to execute these deeds, and some of them being infants and some in India, could not execute the same; Mary, one of the children who had executed it, died during the mother's life, leaving four children, the present plaintiffs, who filed their bill, claiming to have the fund divided into seven parts, one-seventh to go to James, and the remaining six-sevenths to be divided into sevenths, and one of such sevenths to be divided among the plaintiffs.

Bethell, J. Parker, and Piggott for the plaintiffs; the *Solicitor-General, Follett, and Toller* for some of the defendants; *Rolt and Willcock* for others.

The *Vice-Chancellor* said, the arrangement was entered into on the supposition that all the children should execute the deeds. The object of those deeds was to provide that, in case of the death of any child in the lifetime of the mother, leaving children, such child should take its parent's share. The share, in that case, would be only one-eighth, whereas they claimed in effect more than that sum. It could not be supposed that any of the contracting parties intended to put himself in a worse position than the others, or than he would have been in if they had all survived the mother. Under these circumstances, therefore, the arrangement could not be enforced, and the bill must be dismissed.

May 8.—*Roberts v. Roberts*—Stand over.

— 8.—*Duke of Montebello v. Gemmer*—Injunction to restrain the use of plaintiff's name and labels on champagne bottles and corks.

Vice-Chancellor Knight Bruce.

Smith v. North. April 19, 1849.

RENOUNCING EXECUTOR. — RETAINER OF DEBT.

Held, that a renouncing executor has no right in priority over the other creditors to retain a debt due to him from the testator out of moneys received by him before renouncing.

THIS suit was instituted by the creditors of a testator, who by his will appointed the defendant and another his executor. The defendant renounced probate and disclaimed the trusts of the will, but had nevertheless retained, in payment of a debt due to him from the testator, part of the sum of 900*l.*, forming part of the assets, and which had been received by him with the concurrence of his co-executor, in respect of a policy. A question now arose, whether the defendant North was entitled to retain the debt.

Malins and C. Barber for the plaintiff; *Temple, Bacon, Lovat, Glasse and De Gex* for the defendants.

The *Vice-Chancellor* held that the defendant having renounced, must pay over the whole of

the 900*l.* received by him, as he had, in consequence of his so renouncing probate, no right to retain his debt in priority over the other creditors of the testator.

May 8.—*In re Nister Dale Iron Company*—Master's report confirmed.

— 8.—*Attorney-General v. South-western Railway Company*—Injunction restraining interference with turnpike road, until another sufficient road formed.

Vice-Chancellor Wigram.

Corbyn v. Attorney-General. April 21, 1849.

CHARITY FUND DISTRIBUTED WITHOUT A REFERENCE TO THE MASTER.

Order made without a previous reference to the Master for payment of bequest, where it appeared from affidavits that there was no other society coming within the description of the will.

THIS was a petition for the payment of a sum of 5,000*l.*, which a testator named Phillips had bequeathed to the school for the indigent blind, near the Blackfriars' Road.

Nichols, in support of the application urged, that the Asylum for the Indigent Blind was an incorporated society, and the affidavits alleged that there was no other society which could come within the description of the bequest.

The *Vice-Chancellor*, without directing a reference to the Master to ascertain the identity of the charity, made the order as prayed for.

Queen's Bench.

(Before the Four Judges.)

Doe dem. Morison v. Plummer. April 21, 1849.

BENEFIT BUILDING SOCIETY.

Rule nisi granted for new trial, on the ground that, the Society, who were the plaintiffs in the action of ejectment, was illegal, as though professing to be established under the 6 & 7 W. 4, c. 32, it only enabled capitalists to obtain usurious interest and to avoid the stamp duties.

THIS action was brought by the trustees of the Bayewater Mutual Assurance and Accumulating Fund Society against the defendant, a builder in York Street, Westminster, to recover possession of certain premises in Chelsea, which the defendant had mortgaged to the plaintiffs, as a security for a sum which the plaintiffs had advanced. The trial took place at the Sittings after Hilary Term, at Westminster, before Lord Denman, and the verdict was given for the lessors of the plaintiffs, but leave was reserved to the defendant to move to enter a nonsuit, or to enter the verdict for himself. This application was therefore made for

a rule, calling on the plaintiff to show cause why a nonsuit should not be entered, or the verdict entered for the defendant. It was urged in support of the application, that although the society professed to have been established under the statute 6 & 7 W. 4, c. 32, to enable industrious and saving persons to invest their money in the purchase of small houses, it was in reality only to enable capitalists to obtain usurious interest, and to avoid paying the stamp duties; and was, therefore, an illegal society.

M. Chambers in support of the application. The Court granted the rule nisi.

May 8.—*Regina v. Stacey*—Rule nisi for proceeding to send back order of London Quarter Sessions, discharged.

—8.—*Cooper v. Home*—Rule absolute to set aside writ of summons and subsequent proceedings.

—8.—*Lock v. Ashton*—Damages reduced by consent to 60*l*.

—9.—*Regina v. Bishop of Exeter*—Rule discharged for *quare impedit*.

—4, 9.—*Duke of Portland v. Bagshawe and others*—*Cur. ad. vult.*

—9.—*Doe d. Dand v. Thompson*—*Cur. ad. vult.*

—12.—*Regina v. Inhabitants of Barnsley*—Order of Sessions quashed, and of removal confirmed.

Queen's Bench Practice Court.

Baron de Bode v. Reginald. May 1, 1849.

WRIT OF ERROR.—ATTORNEY-GENERAL'S FIAT.

Rule nisi to clerk of errors to allow a writ of error—without the Attorney-General's fiat—her Majesty having granted leave to sue out a writ of error into the House of Lords.

THIS was a motion for a rule calling on the clerk of the errors of this Court, to show cause why he did not allow a writ of error, which the plaintiff was desirous of obtaining. Judgment had been given in this Court against the plaintiff upon certain grounds, and also in the Exchequer Chamber on error, but not exactly on the same grounds, though to the same effect. A petition was therefore presented to her Majesty for leave to sue out a writ of error to the House of Lords, setting forth the two judgments, through the Secretary of State for the Home Department, who, on the 14th of March signified to the plaintiff that the prayer of the petition had been granted. An application was then made to the Cursitor of the Petty Bag Office, who, after considering the matter, informed the plaintiff's solicitor that the fiat from the Attorney-General was unnecessary, as the cause had been in error in the Exchequer Chamber. The writ was issued and brought to the clerk of errors in this Court, who, however, said that the fiat on the part of the Attorney-General was necessary. A petition was

therefore presented to the Attorney-General, setting out the matters of the former petition, and containing the certificate of Manning, S. L., that there were errors on the record. The Attorney-General having refused the fiat, the plaintiff made the present application.

M. D. Hill in support of the motion, contended, that as the writ had issued, the plaintiff was entitled to it without the Attorney-General's fiat, and that the clerk of the errors was bound to receive the same.

Coleridge, J., granted a rule nisi.

May 7.—The Attorney-General appeared and admitted that in this case his fiat was unnecessary.

Common Pleas.

Reed v. Shrubsole. April 25, 1849.

SUGGESTION TO DEPRIVE OF COSTS.—WRIT OF INQUIRY TO ASSESS DAMAGES.

Held, (by *Wilde, L. C. J., Colman and Williams, JJ.*, dubitante *Cresswell, J.*), that the 9 & 10 Vict. c. 95, s. 129, did not include judgments by default, nor a writ of inquiry before the sheriff to assess damages.

THIS was an action of trespass for an assault, on which there was judgment by default for want of a plea, whereupon a writ of inquiry was issued and the damages assessed at 40*s*. A suggestion was therefore entered upon the roll, under the 9 & 10 Vict. c. 95, s. 129, to deprive the plaintiff of his costs, upon the ground that as the judge had not certified on the back of the record that the action was fit to be brought in the Superior Court, the action ought to have been brought in the Sheppy County Court, within the jurisdiction of which the cause of action arose. The plaintiff demurred to the suggestion.

Cressy, in support of the demurrer, contended, that the 129th section only applied to cases in which "a verdict shall be found for the plaintiff for a sum less than 20*l.*," &c., and that the award of damages was not "a verdict" within the meaning of the act.

Wise, in support of the suggestion.

The Court held, (*per Wilde, L. C. J., Colman and Williams, JJ.*, dubitante *Cresswell, J.*), that the demurrer was well founded, as the 129th section did not apply to judgments by default, but to a verdict upon the trial of the cause, and that the award of damages by a jury on a writ of inquiry before the sheriff was not strictly a verdict. The judgment must, therefore, be for the plaintiff, and the demurrer be allowed.

Court of Exchequer.

Cole v. Perring and another. April 18, 1849.

NEW TRIAL.—PAUPER CAUSE.—EXCESSIVE DAMAGES.

Rule for new trial of a pauper cause, on the ground that the damages were excessive,

refused, as the judge was not dissatisfied with the verdict.

THE plaintiff who sued in *formâ pauperis*, brought an action to recover compensation from the defendants, who were the executors of Thomas Counsellor, for services rendered by plaintiff's wife, in getting up evidence to support a claim of Mr. Counsellor under a codicil to the will of Mr. James Wood of Gloucester. A verdict for 150*l.* was given for the plaintiff. It appeared that Mr. Justice Coltman, who presided at the trial, was of opinion that the plaintiff was entitled to a verdict, but considered the damages were excessive. A motion was therefore made for a rule for a new trial, on the ground, as the executors felt they were justified in resisting what they considered as an improper demand, they desired to try the question again before a special jury.

Talfourd, Q. S., in support of the motion.

The Court, however, refused the rule, on the ground that a new trial would not be granted, because the damages might have been less than they ought perhaps to have been, as the judge was not dissatisfied with the verdict, though he thought the damages were excessive.

Rule refused accordingly.

May 7.—*Chapman v. Oppenheim*—Rule to enter suggestion to deprive plaintiff of costs, under the 9 & 10 Vict. c. 95, discharged with costs.

— 8.—*Ness v. Angas*—Rule absolute to enter nonsuit.

— 8.—*Ness v. Armstrong*—*Cur. ad. vult.*

— 9.—*Arnold v. Ryan*—Rule for new trial discharged.

— 9, 12.—*Master Pilots and Seamen of Newcastle-on-Tyne v. Hammond*—*Cur. ad. vult.*

— 12.—*Turner v. Deane*.—Rule to enter nonsuit discharged.

May 14.—*Horn v. Thornborough*—Rule absolute for new trial.

— 15.—*Higgins v. Pitt*—*Cur. ad. vult.*

Exchequer Chamber.

Regina v. Martin. April 30, 1849.

INDICTMENT. — VENUE. — ERROR. — JURISDICTION.

Where the venue in a count of an indictment against the receiver of a stolen sheep was laid in Dorsetshire, whereas the act was committed in Somersetshire, and there was nothing in the count to shew jurisdiction—the conviction was held bad, and judgment ordered to be arrested.

The prisoner was indicted at the Dorset Sessions, together with the two principals, for sheep stealing, and convicted on the 7th count as the receiver, well knowing that the animal had been stolen, and the two principals on the 5th count. After verdict was given, the counsel for the prisoner objected that the venue had been wrongfully laid in the 7th count, inasmuch as it stated the offence had been committed at Trent, in Somersetshire, while the venue was laid in Dorsetshire.

Ffooks, in support of the conviction.

The Court, after referring to the 7th count, said, that that count, without showing any fact to give a jurisdiction in the county of Dorset, laid the venue in that county for an offence committed in Somersetshire. The Court, upon such a state of things, could not give judgment against the prisoner in favour of the prosecution. The count gave no jurisdiction, and in the absence of anything on the face of the count to show the jurisdiction, such jurisdiction would not be presumed to exist. The conviction must, therefore, be quashed, and judgment arrested.

BUSINESS OF THE COURTS.

CHANCERY SITTINGS.

AT WESTMINSTER.

Lord Chancellor.

Trinity Term, 1849.

Tuesday	May 22	{ Appeal Motions and Appeals.
Wednesday	23	{ (Petition-day) Petitions and Appeals.
Thursday	24	{ Appeals.
Friday	25	
Saturday	26	
Monday	28	
Tuesday	29	
Wednesday	30	
Thursday	31	{ Appeal Motions and ditto.
Friday	June 1	{ (Petition-day) Petitions unopposed and Appeals.

Saturday	2	{ Appeals.
Monday	4	
Tuesday	5	
Wednesday	6	{ Appeal Motions and Appeals.
Thursday	7	
Friday	8	{ (Petition-day) unopposed Petitions and Appeals.
Saturday	9	{ Appeals.
Monday	11	
Tuesday	12	{ Appeal Motions and Appeals.

N. B.—Such days as his Lordship sits on appeals in the House of Lords excepted.

Master of the Rolls.

AT WESTMINSTER.

Tuesday	May 22	Motions.
Wednesday	23	Petitions in General Paper.

Thursday . . . 24	Pleas, Demurrers, Causes, Further Directions, and Exceptions.	
Friday . . . 25		
Saturday . . . 26		
Monday . . . 28		
Tuesday . . . 29		
Wednesday . . . 30		
Thursday . . . 31	Motions.	
Friday . . . June 1	Pleas, Demurrers, Causes, Further Directions, and Exceptions.	
Saturday . . . 2		
Monday . . . 4		
Tuesday . . . 5		
Wednesday . . . 6		
Thursday . . . 7	Motions.	
Friday . . . 8	Pleas, Demurrers, Causes, Further Directions, and Exceptions.	
Saturday . . . 9		
Monday . . . 11	Petitions in General Paper.	
Tuesday . . . 12	Motions.	

Short Causes, Consent Causes, and Unopposed Petitions, every Saturday at the sitting of the Court.
NOTICE.—Consent Petitions must be presented, and copies left with the secretary, on or before the Thursday preceding the Saturday on which it is intended they should be heard.

Vice-Chancellor of England.

Tuesday . . . May 22	Motions.	
Wednesday . . . 23	Petition-day	
Thursday . . . 24	Pleas, Demurrers, Exceptions, Causes, and Further Directions.	
Friday . . . 25		Short Causes and Ditto.
Saturday . . . 26	Pleas, Demurrers, Exceptions, Causes, and Further Directions.	
Monday . . . 28		
Tuesday . . . 29		
Wednesday . . . 30		
Thursday . . . 31		Motions.
Friday . . . June 1	(Petition-day,) Petitions, (unopposed first,) Short Causes, and Causes.	
Saturday . . . 2		
Monday . . . 4	Pleas, Demurrers, Exceptions, Causes, and Further Directions.	
Tuesday . . . 5		
Wednesday . . . 6		
Thursday . . . 7	Motions.	
Friday . . . 8	(Petition-day,) Petitions, (unopposed first,) Short Causes and Causes.	
Saturday . . . 9		
Monday . . . 11	Pleas, Demurrers, Exceptions, Causes, and Further Directions.	
Tuesday . . . 12		Motions.

Vice-Chancellor Knight Bruce.

Tuesday . . . May 22	Motions.	
Wednesday . . . 23	Bankrupt Petitions and Causes.	
Thursday . . . 24	Pleas, Demurrers, Exceptions, Causes, and Further Directions.	
Friday . . . 25		Petitions and Causes.
Saturday . . . 26	Short Causes and Causes.	
Monday . . . 28	Pleas, Dem., Exceptions, Causes, and Fur. Directions.	
Tuesday . . . 29		
Wednesday . . . 30	Bankrupt Petitions.	
Thursday . . . 31	Motions.	

Friday . . . June 1	(Petition-day) Petitions and Causes.	
Saturday . . . 2		Short Causes and Causes.
Monday . . . 4	Pleas, Demurrers, Exceptions, Causes, and Further Directions.	
Tuesday . . . 5		
Wednesday . . . 6	Bankrupt Petitions.	
Thursday . . . 7	Motions.	
Friday . . . 8	(Petition-day) Petitions and Causes.	
Saturday . . . 9		Short Causes and Causes.
Monday . . . 11	Pleas, Demurrers, Exceptions, Causes, and Further Directions.	
Tuesday . . . 12		Motions.

Vice-Chancellor Magram.

Tuesday . . . May 22	Motions and Causes.	
Wednesday . . . 23	(Petition-day) Petitions and Causes.	
Thursday . . . 24		Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Friday . . . 25	Pleas, Demurrers, Exceptions, Causes, and Further Directions.	
Saturday . . . 26		Short Causes and Ditto.
Monday . . . 28	Pleas, Demurrers, Exceptions, Causes, and Fur. Dirs.	
Tuesday . . . 29		
Wednesday . . . 30		
Thursday . . . 31	Motions and Ditto.	
Friday . . . June 1	Pleas, Demurrers, Exceptions, Causes, and Further Directions.	
Saturday . . . 2		Short Causes, Petitions, (unopposed first,) and Causes.
Monday . . . 4	Pleas, Demurrers, Exceptions, Causes, and Further Directions.	
Tuesday . . . 5		
Wednesday . . . 6	Motions and Ditto.	
Thursday . . . 7	Pleas, Demurrers, Exceptions, Causes, and Further Directions.	
Friday . . . 8		
Saturday . . . 9	Short Causes, Petitions, (unopposed first,) and Causes.	
Monday . . . 11		Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday . . . 12	Motions and Ditto.	

COMMON-LAW SITTINGS.

Queen's Bench.

In and after Trinity Term, 1849.

MIDDLESEX.

In Term.

A list of Causes will be printed immediately, but on the uncontradicted statement of either side that a cause is too long to be tried in Term, it will be withdrawn from such list, and a small number of completed and new causes will be put into the list, day by day, in their usual order.

1st Sitting, Thursday May 24
 And following days at Eleven o'clock.
 2nd Sitting, Monday May 28
 And subsequent days at Eleven o'clock.

3rd Sitting, Saturday June 9
At half-past Nine o'clock precisely, for Unde-
fended Causes only.

After Term.

Wednesday June 13
At half-past 9 o'clock.

LONDON.

In Term.

Monday June 11
Sitting at 10 o'clock.

For Undefended Causes and such Causes as are
tried in Middlesex after Term, with judgment of
the Term.

After Term.

Thursday June 14
(To adjourn.)

N. B. The hours of attendance at the Marshal's
Office of this Court will in future be from 11 till 5
during Term and Sittings, instead of from 11 to 2,
and 6 to 8.

Common Pleas.

In and after Trinity Term, 1849.

In Term.

MIDDLESEX.	LONDON.
Friday . . May 25	Wednesday . . May 30
Friday . . June 1	Wednesday . . June 6

After Term.

MIDDLESEX.	LONDON.
Wednesday . . June 13	Thursday . . June 14

N. B.—The Court will sit at 10 o'clock in the fore-
noon on each of the days in Term, and at half-past
nine precisely on each of the days after Term.

The causes in the list for each of the above sitting
days in Term, if not disposed of on those days, will
be tried by adjournment on the days following each
of such sitting days.

On Thursday the 14th June, in London, no
causes will be tried, but the Court will adjourn to a
future day.

Exchequer of Pleas.

In and after Trinity Term, 1849.

In Term.

IN MIDDLESEX.	
1st Sitting, Wednesday	May 23
2nd Sitting, Wednesday	30
3rd Sitting, Wednesday	June 6

IN LONDON.	
1st Sitting, Tuesday	May 29
2nd Sitting, Tuesday	June 5

After Term.

IN MIDDLESEX.	IN LONDON.
Wednesday . June 13	Thursday . June 14

(To adjourn only.)

The Court will sit in Middlesex, at Nisi Prius in
Term, by adjournment, from day to day, until the
causes entered for the respective Middlesex sittings
are disposed of.

The Court will sit, during and after Term, at ten
o'clock.

Queen's Bench.—Crown Paper.

Trinity Term, 1849.

For Saturday, May 26.

Liverpool.—The Queen v. The Mayor, &c. of
Liverpool.

London.—The Queen v. The Baptist Missionary
Society.

Middlesex.—The Queen v. The Directors of the
Poor of St. Pancras.

Derbyshire.—The Queen v. The Inhabitants of
All Saints.

Somersetshire.—The Queen v. The Inhabitants
of Winsford.

Middlesex.—The Queen v. The Inhabitants of
Aston, nigh Birmingham.

Wills.—The Queen v. The Inhabitants of
Bradford.

East Riding, Yorkshire.—The Queen v. The
Mayor and Aldermen of Hull.

Cornwall.—The Queen v. The Inhabitants of
Crowan.

Lincolnshire.—The Queen v. John Perkins, (Sur-
veyor of Highways).

Lancashire.—The Queen v. The Inhabitants of
Wigan.

Cambridgeshire.—The Queen v. The Newmarket
Railway Company.

Cornwall.—The Queen v. The Inhabitants of
Bodmin.

Surrey.—The Queen v. The Inhabitants of
St. Pancras (with Lambeth.)

Lancashire.—The Queen v. The Inhabitants of
Wolverhampton.

Surrey.—The Queen v. The Commissioners of
Woods and Forests.

Lancashire.—The Queen v. The Inhabitants of
Spotland.

St. Alban's.—The Queen v. William Thomas.

Worcestershire.—The Queen v. Francis Wyatt
Dyer.

Surrey.—The Queen v. London, Brighton, and
South Coast Railway Company.

Lancashire.—The Queen v. The Inhabitants of
Preston (with Roeburndale.)

Lancashire.—The Queen v. Same (with Elswick.)

Kent.—The Queen v. The Inhabitants of Chatham.

Hants.—The Queen v. The Inhabitants of Basing.

Norfolk.—The Queen v. The Inhabitants of
Chedgrave.

Kent.—The Queen v. Joseph Down Rigby and
others.

Lichfield.—The Queen v. John Mott.

Carnarvonshire.—The Queen v. The Guardians
of Carnarvon and Anglesey Union.

Surrey.—The Queen v. The Inhabitants of Cam-
berwell.

Norwich.—The Queen v. The Inhabitants of St.
Mary Bungay, (Suffolk.)

Middlesex.—The Queen v. Charles Collins Blane

Wills.—The Queen v. Thomas Holborn.

Lancashire.—The Queen v. The Inhabitants of
Over.

Worcestershire.—The Queen v. Benjamin Par-
ham.

Herefordshire.—The Queen v. Same.

Glamorganshire.—The Queen v. The Aberdare
Canal Company.

London.—The Queen v. George Stacy.

Saturday, June 2.

Hants.—The Queen v. The Inhabitants of
Basingstoke.

Middlesex.—The Queen v. The Inhabitants of
St. Giles-in-the-Fields.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, MAY 26, 1849.  
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BANKRUPT LAW CONSOLIDATION BILL.

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THIS Bill to which we have so frequently adverted, has again been referred back to the Select Committee, in which its provisions have undergone, and we understand are likely to undergo, many material alterations. The clauses by which it was proposed to convert the Court of Bankruptcy into a Court of Criminal Jurisdiction, by authorising a single Commissioner to inflict the punishment of imprisonment for three years, without the interposition of a jury, and without any power of appeal to the party aggrieved—clauses against which we ventured to protest soon after their first appearance in print—we are gratified to hear have been struck out. The authority proposed to be conferred on the Court of Bankruptcy under those clauses was wholly indefensible in principle, and the exercise of such a power would have thrown an extent of responsibility upon the Commissioners from which we presume they will be but too happy to escape. Beyond this, it would have afforded another and a cogent argument to those whose advice and influence are now so effectual, in preventing insolvent estates with any considerable amount of assets, from coming into the Court of Bankruptcy for administration and distribution.

There is another division of the bill, in which, if retained at all, we hope to find very extensive changes made—we allude to the section relating to "Arrangements between Debtors and Creditors," with the concurrence of a certain number of the latter. The clauses comprehended in this division of the bill, if passed without any material alteration, would tend to create what, with equal force and accuracy, is de-

scribed in the statement prepared by the Council of the Incorporated Law Society,* as "a mongrel system, which will have all the formalities and expense of a bankruptcy, and none of the advantages of an administration out of Court."

As the application of such a system in reference to the administration of the estates of traders subject to the Bankrupt Law, is a perfect novelty, we subjoin a summary of the clauses in question, which appear to us to be as defective in regard to the machinery proposed to be established under them, as they are objectionable in point of principle.

It is provided, in the first instance, that any debtor unable to meet his engagements, and unable to obtain the consent of all his creditors to a composition, may, with the concurrence of two-thirds in number and value of his creditors, petition the Court of Bankruptcy. The petition is to contain an account of the petitioner's debts and the consideration thereof, and the names, residences, and occupations of his creditors, and also a full account of the petitioner's estate and effects, whether in possession, reversion, expectancy, or in trust for him, and he is also to state in his petition the true cause of his inability to meet his engagements, and such proposal as he is able to make for the future payment or compromise of such engagements.

Upon the filing of such petition, the Court is *privately* to examine into the matter thereof, and, if satisfied, may allow the same *de bene esse*, and cause notice of the filing and allowance to be advertised in the Gazette, and direct a meeting of creditors to be held, and during the examination, and after the allowance of the petition, may grant protection from arrest

* Printed *ante*, page 46.

to the petitioner; or if the petitioner be already arrested, may order his release absolutely or conditionally.

An official assignee, appointed by the Court, is to preside at the meetings of creditors; and if at the first meeting the major part in number and value, or nine-tenths in value, or nine-tenths in number of the creditors, assent to the proposal of the petitioning debtor, or any modification thereof, a second meeting is to be called, and if, at the second meeting, three-fifths of all the creditors present agree to accept the arrangement or composition assented to at the first meeting, the arrangement, subject to confirmation by a Commissioner, is to be binding on the debtor and all persons who are creditors at the date of the petition. Within fifteen days after such second meeting, the agreement is to be submitted to the Court, and the Court, after hearing creditors for and against, may, if it think it reasonable, approve and confirm the arrangement, which is then entered of record, certified, and a protection from arrest indorsed on such certificate.

After the approval and confirmation by the Court *all* the estate and effects of the petitioner are to vest in a trustee, as if such trustee were an assignee in bankruptcy, and such trustee may sue and be sued as if he were assignee, and he is to file an account every six months.

If the petitioning debtor has not made a true discovery of his estate, or has not duly accounted for after-acquired property, he may be summoned and examined at the instance of the trustee or of any two creditors.

In case any difficulty arises in the execution of the agreement or composition, a special meeting of creditors may be called, to annul, alter, or confirm the whole or any part thereof; and at such meeting the resolution of a majority of the creditors is to prevail, but if one-third in number and value of the whole body of creditors do not attend such special meeting, the resolution of the majority will not be valid without the approval of the Court.

When the resolution or agreement has been carried into effect, the Court is to give the petitioning debtor a certificate, which is to operate in the same manner as a certificate in bankruptcy; and on being satisfied that the trustee has fully performed his trust, the Court may give him a certificate, which is to operate as a full release and acquittance for all matters done by such trustee, who may be remunerated for his

services by a resolution of the major part of the creditors, approved by the Court.

It certainly is a just ground of complaint that an individual creditor of a firm which has stopped payment has the power of forcing the insolvent firm into the Court of Bankruptcy, against the decision of all the other creditors; but to authorise the interference of the Court of Bankruptcy in private arrangements between debtors and creditors, is to substitute a greater for a lesser evil. No one can peruse the meagre and unsatisfactory enactments by which it is proposed to carry out the new scheme for administering bankrupts' estates, without seeing difficulties at every stage which must necessarily lead to expensive and prolonged litigation. All that is required or wished for by any section of the community is, that some Court of competent jurisdiction should have authority to decide what proportion of the creditors of an insolvent firm should be entitled, with the assent of the debtor, to determine upon and carry into operation a plan of liquidation which will preclude the necessity of resorting to the Court of Bankruptcy. When the Court of Bankruptcy must be resorted to, either upon the decision of a majority of the creditors, or at the instance of the insolvent trader, the Bankrupt Law—with the experience the trading world have had of its operation—might be rendered efficient for all the purposes for which such a law can be rendered applicable, and the danger and confusion occasioned by attempting to engraft on it a new system, be advantageously and judiciously avoided.

The following is the substance of the clauses suggested on the part of the Incorporated Law Society, with some observations thereon:—

“The first clause lays down the general principle, that a large majority shall, in law, bind the minority.

“The proportions in the clauses at present are not defined in number and value; but one-tenth in number and in value is understood to be the proportion desired by Lord Brougham.

“The proportions are four-fifths in an act at present existing; but there would be no objection to make the majority nine-tenths in the number and value (except 20*l.* creditors). The general feeling has been that six-sevenths are enough.

“The second clause has been added to suspend for three months the power of binding the minority. On this point some observations will be made hereafter.

"The third clause is intended to give the Courts of Bankruptcy the power to restrain a creditor from suing or petitioning in bankruptcy where the proper majority of creditors in the United Kingdom has been obtained. This has been felt necessary as a preliminary measure in case there is a considerable amount of foreign creditors, but it does not deprive the absent creditors of the right to treat the arrangement in the end as not binding upon them, if they constitute, either alone or with others, a minority so great as to prevent the application of the general principle.

"The fourth clause is intended to give the means of proclaiming the assumed fact of a majority having assented to an arrangement, which fact being advertised in the '*Gazette*' can be disputed if untrue.

"The fifth clause makes it imperative on any party who wishes to obtain the benefit of these clauses to file a list of his debts. This clause is adopted from the Insolvent Debtors' Act, and throws the whole consequences of any wilful misstatement in the list of debts on the insolvent trader.

"In the Insolvent Act, only the debt wilfully omitted is not discharged.

"In these clauses the wilful omission of any debt, or the wilful insertion of any false debt, or of any untrue amount of debt, makes the release of the trader void generally, which is a much more adequate protection against any fraud on the part of the trader to create an untrue majority, than that deemed sufficient by the Insolvent Act.

"The sixth clause is considered to be unobjectionable in giving the same rights, and the same rules of administration, as in bankruptcy.

"The seventh clause was originally added in order to give any dissenting creditor the right at any time to bring before a competent Court any matter of complaint which he may think it right to bring forward; and it gives authority to the Court to look into such matter of complaint, and to give such redress as it may think fit, on the widest and most general terms.

"It has been observed that this remedy is inadequate, because it imposes on the creditor the risk of applying to the Court in the first instance at his own expense. But it is submitted that if the general principle be established, that the majority should bind the minority, it is a decided boon to such minority to give them an appeal to a Court in case they can make out any special grievance, although it be at the risk of the applicant.

"It is, on the other hand, not desirable to have matters left in an unsettled state, or that applications should be lightly made; and therefore it is desirable that any person who declines to concur with the majority, should have to consider seriously what are the consequences of running counter to the majority.

"If he has a good ground of complaint, he will get redress, and the Court will give it him, with costs.

will be a mere complaint is merely fanciful, he his own costs, or, pushed, by having to pay the trader, for having met with the costs of application to the Court.

"The general feeling, however, is, that the seventh clause is not required.

"The eighth clause is intended to give to the Court a power of redress, in case there should be any maladministration.

"This power will operate as a salutary check on the trader, and those who take part in the administration. It is a power which may already exist in the tribunals of this country, but it has been thought to be an additional protection to creditors and to the commercial world in general to give it expressly with a view to this especial matter.

"The ninth clause is intended with the same object, to give the most general powers to the Court, and to remove any doubt as to their right to exercise such powers, which they certainly to a great extent at present possess.

"It is confidently believed that these clauses will be found to be sufficient to remedy the mischief already explained, viz., of small creditors standing out, and either getting paid in full, or frustrating the wishes of the majority.

"It is equally believed that the mere existence of a protecting power, such as is given by those clauses, will, in itself, prevent the necessity of resorting to the power for protection.

"Even though no such power at present exists, these arrangements have been carried through to a wonderful extent; but then they have been carried through by settlements being made with small creditors which are most objectionable, and which alone it is the object of these clauses to prevent.

"It is not likely that the class of individuals who attempt to get those undue advantages by the abuse of the existing state of the law, would make the like attempt when they know that the majority have a protecting power, and that that power can be called in aid in case law proceedings or proceedings in bankruptcy are resorted to.

"As large estates have hitherto been satisfactorily liquidated without the aid of any such power, so estates will hereafter be liquidated without any resort to the power, unless it becomes necessary, by the small minority running counter to the majority, which running counter is not likely to be attempted, because the minority will know that it is a hopeless attempt.

"The clauses, therefore, will practically leave the state of the debtor and creditor much as it is at present.

"Where the powers of the Court of Bankruptcy are deemed by the creditors to be necessary to defeat a fraudulent preference, or to establish a title to property, as in the order and disposition of the bankrupt, bankruptcy will be preferred to any other course; and in all those cases where the creditors have cause to complain of the conduct of the debtors, and

wish to have that conduct, ^{as well, or to} is no tribunal dispute improper & Bankruptcy.

equal to that unfrequently happens, as already "But that the creditors find it more to their advantage to take a compromise, even where they may have great cause to complain of the debtor; and where this is the case, they ought not to be precluded from adopting that mode of administration which is most to their pecuniary interest, from any notion that such conduct ought to be punished."

THE CHARITABLE TRUSTS BILL.

WE have particularly to direct the attention of our readers to the 34th clause of this bill, whereby the accounts of the trustees of every charity in the kingdom, the total income of which does not exceed 100*l.*, are to be entered in books to be kept for that purpose every year and rendered to the clerk of the County Court in whose district the charity shall be administered, and this whether the trust be subject or not to the jurisdiction of the Court.

It frequently happens that under one charitable trust there are many different gifts to be distributed in different places, and as the bill now stands, the same accounts must be rendered in each place. It is very material that solicitors who are engaged in these trusts,—in number about twenty-four thousand,—should consider the effect of this provision.

They should also well weigh that part of the Bill which gives jurisdiction to the County Courts. If each charity case is to be heard in open Court, attended by the parties on both sides and their witnesses, it is asked, where will be the saving of expense, compared with a summary hearing on petition before the Masters in Chancery? The latter, also, it is urged, are well acquainted with the practice and principles of Equity, and their decisions would probably be more uniform and satisfactory than those of the County Court judges, who have almost all been selected from the Common Law Bar.

Then, although an appeal is to be allowed, it must be with the judge's concurrence,—a provision which seems unreasonable, especially as security for costs, in case of failure, is to be given by the appellant.

The 97th section gives large powers on a reference to the County Court judges, to make inquiries, take accounts, and exercise all such acts as may be done by a Master in Chancery.

The powers vested in the County Court *Treasurers* should also be scrutinized, for many of them may have the funds in hand of several hundred small charities, and the bill provides no means for securing the money.

THE ANNUAL CERTIFICATE DUTY OF ATTORNEYS.

WE are glad to learn that Lord Robert Grosvenor has again acceded to the request of the Incorporated Law Society, and taken charge of the Bill for the Repeal of the Annual Certificate Tax. The proposition will come with favourable prospects from the noble member of the Metropolitan County, who, we understand, is fully convinced of the justice of the case. As early a day as the state of public business will permit, will be fixed for the motion. We are not aware whether the Chancellor of the Exchequer will allow the bill to be brought in and read a first time without opposition,—reserving the discussion for the second reading.

This would be the most advisable course, and on whatever mode of proceeding the Government may determine, we presume the proposition of Lord Robert Grosvenor will be received with due respect, as well on account of the importance of the question and the claims of the profession, as the weight and influence of the members by whom the measure is supported. If this course should be adopted, an early day might be appointed to bring in the bill. It appears still to be in good time, for the Chancellor of the Exchequer has not yet brought in his budget. We trust some revision will also take place of the Stamp Act, if the whole subject cannot at present be considered.

Our readers will, no doubt, look out for the day appointed for moving the question, and in the meantime will prepare for the discussion, and induce their friends in parliament to consider the undoubted justice of the claim, and to attend in their places when the time arrives. The proposed measure aims at a *total* repeal of the Impost. We understand the noble Lord considers it altogether unjustifiable on any principle of taxation; and therefore no half-measure is proposed; but we presume if the Chancellor of the Exchequer should offer a reduction of the amount, with a promise of further relief hereafter, the petitioners may be advised to accept an "instalment of justice." With

the increase of the profession since the tax was imposed, the amount paid to the revenue is well nigh doubled. It would be proceeding in the right direction to reduce it in the same proportion, and consistently with the diminished emoluments of the profession.

METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

ANNUAL REPORT OF THE COMMITTEE OF MANAGEMENT.

Law Bills in Parliament.

The Committee have now to bring before the notice of the Members the principal Bills that have been introduced into Parliament, containing alterations in the law.

Petty Sessions.—The Bill introduced by the Attorney-General last session to regulate the holding of Courts of Special and Petty Sessions, was referred to Select Committees, and there suffered to drop.

Poor Law Orders.—No measure has yet been introduced to remove the grievance at present existing under the Poor Law Acts, by which the Board of Guardians may appoint unqualified persons to conduct their legal business at the Petty Sessions.

Administration of Oaths.—The Profession has still to complain of the inconvenience, delay and expense, arising from the fact, that the facilities for the Administration of Oaths, enjoyed by the Provincial Members, are not extended to Metropolitan Practitioners. The Committee have taken every opportunity of representing this grievance in the proper quarter, and they entertain some hopes that before long it may be remedied, although they regret that this was not effected by introducing the necessary provisions into the Act which was passed last Session, empowering certain officers of the Court of Chancery to administer oaths.

Subsequently to the date of the Annual Report last year, several Bills affecting the Administration of the Law were introduced into Parliament, some of which have passed into law. None of these, however, appear so to affect the interests of the Profession as to call for comment from the Committee. While they were before the House, the Committee kept attention directed to them, and adopted such steps as appeared to be desirable.

In the present Session no fewer than 59 Bills have been already introduced into Parliament affecting the Administration of the Law; namely, 12 in the House of Lords, and 47 in the House of Commons. To all of these the Committee have paid some attention, and, in particular, they have examined their bearings upon the interests of the Profession, while the more important of them have been very carefully considered. They propose very extensive changes in several branches of the Law; many were introduced in a very crude and imperfect

state, and have already undergone material alterations. The following will immediately affect the interests of the Profession.

Bankruptcy.—The Bill, introduced by Lord Brougham for the Consideration and Amendment of the Bankrupt Law, has received the anxious attention of the Committee, and they have prepared an elaborate Report upon it. As at first brought forward it was, in the opinion of the Committee, liable to the most serious objections, and they, therefore, at once presented a petition, praying that the Bill might not be proceeded with until after Easter, that it might receive the mature consideration of the Profession; and the House has made an order in accordance with the prayer of the Petition. The Bill was referred to a Select Committee, and has been by them very much modified. The following are the principal points in which it is more immediately interesting to solicitors.

The eighth Article provides that a Serjeant-at-Law, or a Barrister of seven years' standing, shall alone be eligible to be appointed a Commissioner of the Court. Against the monopoly of appointments which is being rapidly consummated by the Members of the Bar, the Committee think it important to take every opportunity of protesting. The exclusion of Attorneys from eligibility as Commissioners in Bankruptcy is a modern innovation, arising solely from the fact that the Bar has gradually succeeded in getting a control over the appointing authorities. It is not warranted by experience, which shows, on the contrary, that the duties of the Office have always been as well fulfilled by Attorneys as by Barristers; and this is what would be expected from a consideration of the nature of those duties, which arise principally from mercantile matters and questions of account, with which Solicitors in large practice have daily to deal, and concerning which it frequently happens that Barristers of much more than seven years' standing are profoundly ignorant. Much of the dissatisfaction which is at present felt by the public with the Bankruptcy Court, arises from the fact, that some of the learned Commissioners are not, as they cannot be expected from their want of experience to be, sufficiently acquainted with the details of the ordinary transactions of a commercial community. The Committee contend that, having regard to the apprenticeship and examination to which Solicitors are subjected, if seven years' standing at the Bar is to confer eligibility, a similar amount of actual practice as a Solicitor ought also to do so. The Committee believe that the experience of the Local Courts would show that Judges appointed from the ranks of Attorneys are, in general, at any rate as capable of discharging their duties with benefit and satisfaction to the Public, as well as to the Profession, as those who have been raised from the Junior Bar.

The Committee also strongly object to the mode in which it is proposed to fill up vacancies in the number of Commissioners. By Article 6 it is provided, that vacancies are to be filled up by rotation, the vacancies in London being

always supplied from the country; whereas, the Committee contend that the fittest men ought to be chosen from the ranks of the Profession. It is a most important principle, and one which, in practice, ought to obtain universally, that a Judge, when once appointed, should, in order to preserve his independence, be unable to look forward to any further advancement. But besides this, it has always been considered desirable to infuse new life into the Judicial Bench, by appointing men fresh from the exercise of their Profession; and this course should be adopted in the present instance, unless a case can be made out for making this an exceptional Court; and in all cases the responsibility of the party appointing to office should be neither forgotten nor diminished. The proposed plan would be particularly prejudicial to the Court in London, by precluding the possibility of its ever sharing any of the advantages to be derived from the ordinary course of filling up every judicial vacancy by the best man that can be chosen from the actual practitioners.

The 38th Article provides that a Registrar must be either a Barrister of five years' standing, or a Solicitor of five years' actual practice. Experience shows that this will practically secure the monopoly of the office to the Bar. The Committee claim, on the part of their Professional Brethren, to be maintained upon a footing of equality with the Bar, so far as regards eligibility to all those offices which have, until lately, been open to both branches of the Profession. And they therefore contend that in this article, the conditions of actual practice ought to be extended to the Bar.

Article 55 enacts, that the Master is to be either a Barrister, Pleader, Registrar, or Attorney, of not less than five years' standing. The Committee are quite sure that all who are conversant with the nature of the duties of a Taxing-master will agree that no one who has not been an Attorney in extensive practice, is, or can be, competent to discharge them satisfactorily. In the case of any other person, it is entrusting a discretionary power of vital importance to a party, whose previous habits of business have not been at all calculated to enable him to arrive at a just conclusion upon the questions which he has to decide. No one can so well decide upon the proper amount of remuneration, as he who has been conversant with the duties for which remuneration is to be given; and it is unreasonable to assume that this knowledge can be imparted to one who is brought to his task almost without ever having seen a Bill of Costs, and wholly unacquainted with the amount of labour and degree of skill which must have been exercised in the discharge of the duties to be remunerated. This is shown by the every-day working of the several Taxing Offices, and especially in those where some who have been Attorneys are sitting side by side with others who have not; an Appointment to Office does not confer the capacity necessary to discharge its duties, and the public are even more interested in this question than

the Attorney. The allowance should be remunerative, and not capricious. The salary which is proposed to be given to the Taxing-Master in Bankruptcy, 1,200*l.* per annum, compared with that compared for the other Officers of the Court, is too low. There is no other Officer whose duties are more responsible, or nearly so laborious. The Committee would, however, rather recommend, that the salaries of the other Officers should be reduced, than that of the Taxing-Master should be increased.

Article 69 provides, that the Clerks to the Chief Registrar, the Accountant, and the Master, shall hold their Office from the Lord Chancellor. The Committee think that this is very objectionable: the head of every Office ought to be responsible for the due discharge of the duties performed by his Clerks, which it is impossible he should be, unless their appointment and dismissal is immediately dependent upon himself.

Although not immediately referring to their branch of the Profession, the Committee cannot refrain from directing the attention of their Members to the provision for the retirement of the present Chief Registrar. Article 85 provides that any Officer may retire upon two-thirds of his salary, in case he shall be afflicted with any permanent infirmity, or shall have attained the age of 70 years, having served 20 years in the Court, or shall have served 25 years in the Court. Article 86 provides, that the present Chief Registrar, who, as described in Article 35, is only 67 years' old, and has served for only 17 years, and whose Office has, we believe, been practically a sinecure, shall be at once permitted to retire upon the full amount of his salary. The Committee submit that this cannot be defended upon any principle of justice.

The 1st section of the 7th chapter of the Bill containing Articles 275 to 289, proposes a method of arrangement between Debtors and Creditors, with the concurrence of a certain number of the latter, and under the sanction of the Court. It is founded upon the 7 & 8 Vict. c. 70, which has, the Committee believe, been found quite an impracticable act, and requires to be much more radically altered than it is here proposed to do.

Mr. Commissioner Fane has printed, for consideration, a series of Articles, which he proposes to substitute for this Section, and which would, the Committee believe, afford a practical and valuable means of winding-up estates in ordinary cases. In the shape in which these proposed clauses first came before the Committee, they were liable to objection on the part of the Profession in three respects:—The proceedings were to commence with a Petition, which was necessarily to be witnessed by one of the Messengers of the Court. The Messengers of the Court were to be bound, if required, by the Petitioner, to fill up the form of his petition, attest its signature, and then present it to the Court. This second provision, the Committee felt, was, in point of fact, empowering the Messenger to act as the Attorney

to the Petitioner in the matter of his Petition, and both this and the first were calculated to place the Messenger in a position with relation to the Profession, which might be very irksome and objectionable. A third clause provided, that so long as the matter remained in the hands of the Debtor, the Court should appoint the Solicitor. The Committee also felt that this was very objectionable. The object of Mr. Commissioner Fane was to prevent the Solicitor being selected by the Debtor, but where the Creditors think it worth their while, under the present practice, they do in reality appoint the Solicitor. The Court ought not to be a moving party, and especially ought not to point out particular Practitioners by placing business in their hands. These objections have been pointed out to Mr. Commissioner Fane, and the Committee are happy to say that he has, in consequence, entirely omitted the objectionable portions.

Chapter 10 relates to Solicitors and their Costs. As the Bill was introduced into the House, it provided that Solicitors might appear in any proceedings in the Court without being required to employ Counsel, except in proceedings before the Court of Appeal. To this exception, of course, the Committee strongly objected, for the Court of Appeal was to be only the present Subdivision Court under another name, and no reason could be given why Solicitors should not continue to be permitted to appear before three Commissioners sitting together, before each of whom they might appear when sitting separately. In the Select Committee, however, the whole appellate jurisdiction has been taken away, and this objection, therefore, no longer applies. The Committee are also of opinion, that it would be a great improvement to allow Solicitors to enter in the Registrar's Office, the names of any Clerks by whom they were willing to be represented in Court. There are in Bankruptcy a vast number of interlocutory proceedings which are of not nearly as much importance as the majority of the business which is transacted at Judges' Chambers, and which, in point of fact, is almost universally transacted by Clerks. The Gentlemen of the Bar who attend the Bankruptcy Court, have recently attempted to prevent any business being transacted by Clerks, whether articulated or not. It is therefore of importance that some regulation should be made upon the subject, and there is no reason why Solicitors should not be allowed to be represented before the Bankruptcy Commissioners by their Managing Clerks, as they are before the Judges of the Superior Courts of Westminster, both at Chambers, and in the conduct of causes. Their double responsibility, to the Courts for proper conduct, and to their clients for diligence and efficiency, is quite sufficient to prevent such a privilege being abused. The Committee are glad to see that it is intended to abolish the invidious distinction made, though probably unintentionally, by preceding Acts, between the Metropolitan and Provincial Solicitors, with regard to the legislative security for

their right of Advocacy, and which was adverted to by this Association in their original address to the Profession.

The Committee will continue carefully to watch the progress of the Bill, which they feel to be in many respects a highly valuable measure; and they will take such steps as may, from time to time, appear expedient.

Corrupt Elections.—A bill to provide for inquiry into Corrupt Practices at Elections, has been introduced into the House of Lords by the Lord Chancellor.

Under Section 3, the senior Judge of Assize, when inquiry has been recommended by an Election Committee, is to appoint a Barrister of seven years' standing, to be a Commissioner for the purposes of the Act; and under Section 16, the Speaker may appoint an Agent to prosecute the inquiry before the Commissioner. The Committee contend that Solicitors ought to be eligible with Barristers to be Commissioners, and exclusively eligible as Agents.

Cost of Deeds.—A short Bill, introduced by Lord Brougham, has already passed the Lords, extending the provisions of the 8 & 9 Vict. c. 119, by which the Taxing-Masters were required, in estimating the sum proper to be charged for certain Deeds, to consider, not their length, but the skill and labour employed, and the responsibility incurred in their preparation; and enacting that the same principles shall be applied in taxing the costs for preparing or executing any Deed, Will, or other Instrument, in writing.

No step has yet been taken on this Bill in the House of Commons, and the Committee hope that it will undergo the careful scrutiny of the Profession before it is suffered to pass into law. The bill upon which it is founded, has very rarely been acted upon, but the present measure may be so interpreted as to produce the most sweeping and prejudicial changes in the department of Conveyancing, and it calls for active and anxious attention to its progress, that the welfare of the Profession may not be sacrificed to its experimental provisions.

Public Roads.—In the House of Commons, a Bill has been introduced by Government to consolidate the Laws relating to Public Roads in England and North Wales. The Roads are to be under the control of County Roads' Boards and Way-wardens' Boards, each of which are to appoint Clerks. The Committee are informed that applications from divers unqualified persons have already been received in anticipation of these appointments, and they contend that provisions should be introduced making duly qualified Solicitors alone eligible as such Clerks.

There are, however, much more serious and fundamental objections to the Bill. By the 74th section the present Clerks go out of office on the 1st January, 1851, without compensation. The Clerkships, of which there are several hundreds throughout the kingdom, are generally held by Solicitors, and no charge of want of economy, or any other mismanagement, has ever been brought against them to call for,

or justify, this wholesale proscription. The Committee learn that an active opposition has already been organized amongst the parties immediately interested, and they think that this is a case where the influence of the Association, representing the whole of their branch of the Profession, ought to be brought to the assistance of that portion with whose interests it is thus proposed wantonly to interfere.*

Real Property Transfer.—A Bill has been introduced by Mr. H. Drummond to facilitate the Transfer of Real Property, to which the Committee are giving their best attention. They believe that its effect would be to render titles insecure and unmarketable, a searching investigation into them even more necessary and more expensive than it is at present, and to increase litigation. If any parties, therefore, would derive benefit from it, it would be the Legal Profession, as was remarked by the Solicitor-General in the debate on the second reading. But the Committee believe that there is no real antagonism between the interests of the Profession and that of the public, and that this Bill, if passed, would inflict a serious evil upon both. They have taken active measures to call attention to it, that the Profession may know what is proposed, and may have an opportunity of effectively expressing their opinion. The Committee are in communication upon this subject with all the provincial Law Societies, and also with a large number of individual Members of the Profession. They conceive, however, from what has already passed in the House, that it is impossible that this crude measure should become law.

County Courts.—The Committee cannot allow this opportunity to pass without repeating, in the name of their professional brethren, their protest against those provisions of the County Courts Act, by which Attorneys and Solicitors are excluded from eligibility for the appointments of Judges—by which their right of advocacy is rendered dependent upon the will of the Judge—and by which their fees are so restricted, as continually to render the conducting of a case in those Courts a positive loss to the Practitioner. They think that every means should be adopted that seems likely to remedy these grievances, which they feel are obnoxious to every sound principle of public or professional policy.

UNQUALIFIED PRACTITIONERS IN THE COUNTY COURTS.

THE attention of the profession and the legislature ought to be immediately directed to a large class of men who style themselves, "Accountants," and "Agents," but who are really nothing more than collectors of debts. We are informed that these persons obtain summonses from the

County Courts for their "clients," (as they call their employers,) and take out all other necessary papers, settle with defendants for stay of proceedings, and in fact do everything but attend the Court on the trial.

This system should be immediately abolished, and none but certificated attorneys or their authorized clerks ought to be allowed to obtain a summons or do anything in the County Courts, on the same principle that writs and all subsequent proceedings must be done by a solicitor in the Superior Courts. A small fee (regulated according to the amount of the debt) should be allowed the attorney for his trouble and attendance on such occasions.

As the emoluments of attorneys have been so much reduced by the establishment of the County Courts, they ought not to be further injured by these practices, and it is but common justice to those who have paid so heavily to attain the knowledge they possess, that the business in the Courts should be transacted exclusively by them.

We are obliged to "An Old Practitioner" for his suggestion, and would recommend that the subject should be brought to the notice of the County Court Judges, most of whom, if not all, are desirous of having the business in their Courts conducted by responsible attorneys. The increase of the fees must of course be the act of the legislature.

BARRISTERS CALLED.

Hilary Term, 1849.

LINCOLN'S INN.

January 30.

James Keene Hawkins.
Joshua Toulmin Smith.
George Williams Leech.
Francis Williams Clarke.
James Wilberforce Stephen.
Henry Kennedy.

INNER TEMPLE.

January 26.

George R. Clarke.
James Stansfield.
John Spencer.
Edmund H. Dickinson.
Henry D. M'Leod.
Charles John Bunyon.
Charles Riley.
Edward Sykes.
Augustus F. Boyce.
William Henry Smyth.

* In consequence of the opposition here alluded to, this Bill has since been withdrawn.

Robert B. Mansfield.
Alfred Hamilton.

January 30.

Frederick Peel.

MIDDLE TEMPLE.

January 12.

George Tennant.
John Jervis, jun.
William Tapping.
George Frederick Speke.
Charles Chandos Pole.
Thomas Harrison.
John German.
John Brewer.
John Oliver Surtees.

January 26.

Reginald Fowler.
George Pearson Wilkinson.
John Corsbie.
John Charles Frederick Sigismund Day.
Charles Edward Hawkins.
Francis Halhed.

GRAY'S INN.

January 24.

James Fallon.

January 30.

Frederick James Furnivall.

DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From April 24th, to May 18th, 1849, both inclusive, with dates when gazetted.

Bourdillon, James, James Bourdillon, jun., and Stafford Bourdillon, 30, Great Winchester Street, City, Attorneys and Solicitors, so far as regards the said James Bourdillon. April 24.

Downes, Edward, Thomas Gamlen, and Charles Davison Scott, 7, Furnival's Inn, Attorneys and Solicitors, so far as regards the said Edward Downes. April 27.

Lardner, John Haddock and Edwin Nathaniel Dawes, Rye, Attorneys and Solicitors. May 4.

Philbrick, Frederick Blomfield, and Henry John Philbrick, Colchester, Attorneys and Solicitors. May 15.

MASTERS EXTRAORDINARY IN CHANCERY.

From April 24th, to May 18th, 1849, both inclusive, with dates when gazetted.

Banks, William Lawrence, Brecknock. May 1.

Hepworth, John, Birmingham. May 15.
Morrison, George Carter, Reigate. May 11.
Peter, John Luke, Redruth. May 8.
Price, John, Buntingford. May 4.

Thompson, John, Wooler. May 15.
White, George Graham, Launceston. May 18.

PERPETUAL COMMISSIONERS.

Appointed under the Fines' and Recoveries' Act.

Cartwright, James Nathaniel, Dunstable, in and for the counties of Bedford, Hertford, and Buckingham. May 15.

Cleverton, Frederick William Pouget, Sal-tash, in and for the county of Cornwall. May 15.

Smith, Henry, Richmond, Surrey, in and for the counties of Surrey and Middlesex. May 18.

Smith, Robert, Richmond, Surrey, in and for the counties of Surrey and Middlesex. May 15.

NOTES OF THE WEEK.

COMMENCEMENT OF TRINITY TERM.

TRINITY TERM commenced on Tuesday last, with a repetition of the complaint which prevailed during the last three months, of a remarkable absence of *new business*. The most gratifying circumstance connected with the opening of the Term was the return of Lord Denman to his place on the Bench after his recent indisposition, from the effects of which the learned Chief Justice seems to have completely recovered.

ILLNESS OF THE LORD CHANCELLOR.

We are concerned to state that Lord Cot-tenham has had a sudden attack of illness, which is reported to be of such a nature, as to render it improbable that the noble and learned Lord will be able speedily to resume his judicial duties.

RECENT APPOINTMENT.

Sir David Dundas, M.P., who held for a short period the office of Solicitor-General, has accepted the office of Judge Advocate, vacant by the appointment of Mr. Hayter as Secretary of the Treasury.

STRIKING OUT CAUSES.—ABSENCE OF COUNSEL.

Several of the causes which were struck out of the Court of Exchequer List, noticed in our last number, (p. 39) have or will be re-entered. It appears that the Judges remain firm to their resolution of expunging all cases in which counsel are unprepared. The question is a difficult one. No doubt, for the despatch of business a somewhat strict rule is requisite, but great hardship will frequently arise by inflexibly adhering thereto. We trust that in the arrangements to be made between the Bench and the Bar, the interests of the Suitors and the convenience of their Attorneys will be duly considered.

RECENT DECISIONS IN THE SUPERIOR COURTS.

AND SHORT NOTES OF CASES.

Lord Chancellor.

London and North Western Railway Company v. Smith. May 8, 1849.

LANDS' CLAUSES' CONSOLIDATION ACT.—
COMPENSATION.

Held, that before a claimant to compensation for injuries by a railway summoned a jury to assess the damages, he ought to establish his legal right to compensation, under the act 8 Vict. c. 18, or the local act of the railway complained of.

The defendant was the owner of an iron foundry and warehouse in Bartholomew-street, Birmingham, and considering that his premises and business were seriously injured by the alteration of the street and other works, proceeded under the 8 Vict. c. 18, s. 68, to summon a jury to assess the damages. The 68th section enacts, that "if any party shall be entitled to any compensation in respect of any lands, or of any interest therein, which shall have been taken for or injuriously affected by the execution of the works, and for which the promoters of the undertaking shall not have made satisfaction under the provisions of this or the special act," &c., "or if the party so entitled as aforesaid, desire to have such question of compensation settled by jury, it shall be lawful for him to give notice in writing of such his desire, to the promoters of the undertaking, &c." The plaintiffs then filed their bill for an injunction to restrain the defendant from summoning the jury, on the ground that he had sustained no damage, but the Vice-Chancellor of England refused the injunction, and left the defendant to his remedy for such damages as a jury would award. Whereupon this appeal was presented.

Bethell and *Speed*, for the appellants, submitted that they were willing to compensate the respondent to a reasonable extent, but that the defendant ought to establish his claim to be within the provisions of the act before empanelling the jury.

Malins, *Metcalfe*, and *Phipson*, for the respondent.

The Lord Chancellor said, that the 8 Vict. c. 18, gave complainants certain rights, but it was not, therefore, to be assumed, that those rights were to be exercised by every party who might put forth claims, however unfounded they might be, or that the company were to be subjected to all the expense and trouble of an inquiry before a jury to assess the damages, when it might happen that the claimant was not entitled under the act to make any claim for damages. If the course the respondent proposed to follow of summoning a jury to assess the damages were allowed, and it should happen that the question of right were ultimately determined against the claimant, the company would be put to great expense and injustice. The respondent must first establish his right at law, for the right of the claimant might be

determined against him, and thus there would be an end of the whole matter in one proceeding. The case was clearly within the jurisdiction of this Court, and the injunction must be granted,—the defendant to bring his action to try his legal right, and the company to admit that the defendant was injured in some respect, and so far entitled to some compensation.

Appeal allowed.

Rolls' Court.

Kennaway v. Tripp. April 25, 1849.

SECURITY FOR COSTS.—PLAINTIFF ABROAD.

Where the plaintiff in a suit had gone abroad out of the jurisdiction after answer filed, he was ordered to give security for costs, although he did not intend to reside permanently abroad and came frequently to England.

THIS was an application on the part of the defendant, that the plaintiff might be ordered to give security for the costs of the suit, as he was now residing at Boulogne, out of the jurisdiction of the Court. It appeared that the plaintiff resided in England when the suit was commenced, and that since the answer was filed, he had let his house in England, and taken a house at Boulogne.

Kinglake in support of the motion; *Goodeve*, contra, urged that as the plaintiff did not intend to reside permanently at Boulogne, and came frequently to England, there was no ground to say that he purposed to avoid the jurisdiction of the Court.

The Master of the Rolls, however, held that the plaintiff must give security for costs as he had not gone abroad for a short time only, but had actually taken a house at Boulogne out of the jurisdiction.

Vice-Chancellor of England.

Hirst v. Tolson. April 25, 1849.

ARTICLES OF CLERKSHIP.—RETURN OF
PART OF PREMIUM.

Where a clerk was articulated for five years to a solicitor who died in two years, Held that the clerk was entitled to recover a proportionate part of the premium out of the assets of the deceased attorney, and a reference ordered to ascertain the amount to be returned.

By articles of clerkship, dated November 6, 1845, made between Richard Tolson, an attorney, and the plaintiffs, Sarah Hirst, and Henry Hirst, her son, Henry Hirst was articulated for five years, in consideration of 200*l.*, and Richard Tolson covenanted to instruct the plaintiff in the profession of an attorney and solicitor. Tolson died the 23d October 1847, and the plaintiff was articulated to another attorney for the remainder of the term, in consideration of such proportion of the premium as should be returnable by the executors. The executors proposed to complete the contract by service to the surviving partner, who continued to carry on the business and had agreed to

take the plaintiff for the remaining three years without any further remuneration. This offer the plaintiff refused to accept, and the defendants therefore objected to return any portion of the premium. A summons had been refused by Mr. Justice Erle, on the ground that a Common Law Court had no jurisdiction against executors, whereupon this bill was filed for the return of such proportion of the premium as might be found due in respect of the unexpired three years of the term.

Bethell, Rolt, and Rogers, for the plaintiffs, cited *Soam v. Bowden*, 30 Car. 2, 1678, Finch, 396. *Roundell Palmer and Amphlett*, for defendants, cited *ex parte Prankerd*, 3 B. & Ald. 257; 1 Chitt. R. 694; *Cuffe v. Brown*, 5 Price, 303; *Argles v. Heaseman*, 1 Atk. 518.

The Vice-Chancellor said, the bill alleged that a debt had accrued by reason of the right of the plaintiff to the return of a proportionate part of the premium, and the party to whom the premium was paid being dead, this suit was brought against the assets. This case was somewhat similar to that of *May v. Skey*, 37 L. O. 513, where a bill was filed against the husband by the plaintiff, who had advanced money to the wife for her support. The Court had jurisdiction to administer the assets, but as in that case the husband was alive, the demurrer for want of equity had been allowed. Here, however, there was clearly a debt at law, and the party being dead, the plaintiffs had a right to sue the assets. There must, therefore, be a reference to the Master to ascertain what part of the premium ought to be returned and the defendants to pay the same as well as the costs of the suit.

Vice-Chancellor Knight Bruce.

In re Emberton Friendly Society. April 27, 1849.

CHARITY FUND.—TRANSFER TO NEW TRUSTEES.—COSTS.

Order for transfer of charity fund to new trustees,—one set of costs only to be allowed to the old trustees, who appeared separately, and those to the trustee who had not opposed the transfer.

THIS petition was presented for the transfer of the funds of the society to four new trustees, the former retiring on account of their age. One of the trustees, it appeared, was willing to make the transfer; but the others refused to transfer, as there had been irregularities in the proceedings with respect to alterations in the rules of the society.

Chamless, in support of the petition, contended that the trustees who had raised the objections to the rules, and filed an affidavit relating to irrelevant matters, and appeared by different counsel, should bear their own costs.

Russell and Ede for some of the trustees; *Briggs* for another trustee, who had consented to make the transfer.

The Vice-Chancellor said, the trustees might have safely acceded to the appointment of the new trustees without bringing the matter be-

fore the Court. Only one set of costs would be allowed, and that would be to the trustee who had been willing to make the transfer. No costs would be allowed to the other trustees, but they would, nevertheless, not be ordered to pay costs.

Vice-Chancellor Wigram.

Lewis v. Burnie. April 27, 1849.

WILL.—CONSTRUCTION.—MARRIAGE SETTLEMENT.

Upon construction of a will, held, that the plaintiff took an absolute interest in the capital of 60l. a-year, bequeathed under a codicil in addition to a former sum given under a marriage settlement.

THE testator, by a codicil to his will, gave to each of his four daughters a sum equivalent to 10,000l. consols, or 300l. a-year. He also directed that 60l. a-year should, in order to make up a similar sum of 300l. a-year, be given to another daughter, the wife of the plaintiff, in addition to a sum of 240l. a-year, produced by forty shares in the Globe Insurance Company, which had been settled on her upon her marriage, to revert, however, to the estate of the testator, on the death of the plaintiff and his wife, leaving no issue of the marriage. Mrs. Lewis had since died.

The Vice-Chancellor said, that the plaintiff was entitled to the absolute interest in the capital of 60l. a-year under the codicil of the testator, and that the reversionary interest in the Globe shares under the marriage settlement followed the provisions of the settlement.

Queen's Bench.

Doe dem. Lord Arundel v. Fowler. April 23, 1849.

NEW TRIAL.—REJECTION OF EVIDENCE.

Quære, whether a certificate of the registry of the death of a party by the parish clerk instead of the clergyman of the parish, was properly rejected to prove the death of that party under a lease for lives.

AT the trial of an action of ejectment by the lessor of the plaintiff, in which he sought to recover possession of premises built on land in Wiltshire, it appeared that the defendant held the premises under a demise upon three lives for 99 years, from May 10, 1773, by the grandfather of the plaintiff to John Street. The plaintiff, in order to prove the death of one of these lives, produced a certificate of the registry of the death, signed by the parish clerk. Mr. Justice Williams rejected the evidence, on the ground that it ought to come from the clergyman of the parish, and the defendant consequently obtained a verdict. An application was, therefore, made for a rule nisi, to set aside the verdict, and for a new trial on the ground of the rejection of the certificate.

Greenwood in support of the motion.

The Court granted the rule.

Queen's Bench Practice Court.

Regina v. the Judge of the Cornwall County Court, Ex parte Newton v. Nancanon. May 4, 1849.

CORNWALL COUNTY COURTS.—STANNARIES' COURT.

Quære, to what extent the 9 & 10 Vict. c. 95, s. 141, affects the jurisdiction of the Court of Stannaries in Cornwall?

THIS was a motion for a rule calling on the Judge of the Cornwall County Court, to show cause why a prohibition should not issue commanding him to stay execution in this case. The defendant, in an action for goods sold and delivered, pleaded that he was entitled to be sued in the Stannaries' Court, as he was a tin miner; the plaintiff, however, obtained a verdict. By the 9 & 10 Vict. c. 95, s. 67, it is enacted, "that no privilege, except as hereinafter excepted, shall be allowed to any person to exempt him from the jurisdiction of any Court holden under this act;" and by the 141st section, "that nothing in this act contained shall be construed to affect the Courts of the Lord Warden, or of the Vice-Warden of the Stannaries of Cornwall; but this provision shall not be deemed to prevent the establishment of any Court under this act within the said Stannaries, or to limit or affect the jurisdiction of any Court so established under this act."

Montague Smith, in support of the application.

Coleridge, J., said, that it was intended by 9 & 10 Vict. c. 95, to give the County Courts and the Stannaries Court a concurrent jurisdiction; the rule *nisi*, would, therefore, be granted.

Common Pleas.

Woodham v. Newman. May 1, 1849.

COUNTY COURT.—JURISDICTION.—SET-OFF.

Held, upon a rule *nisi*, to enter a suggestion to deprive the plaintiff of his costs under the 9 & 10 Vict. c. 95, s. 129, that the words in the 58th section, "on balance of account," only related to cases where there had been an actual balancing or payment and not to a case where an action had been brought in the Superior Courts for more than 20*l.* and the amount reduced by a set-off to less than 20*l.*; and the rule was, therefore, discharged.

A RULE *nisi* had been obtained to enter a suggestion to deprive the plaintiff of his costs under the 9 & 10 Vict. c. 95, s. 129, in an action which was brought in the Superior Courts, where the sum recovered was under 20*l.*, and Mr. Justice Maule, who presided at the trial, had refused to certify that the action was fit to be brought in the Superior Court. By the 58th section, it is enacted, "that all pleas of personal actions, where the debt or damage claimed is not more than 20*l.*, whether on balance of account or otherwise, may be holden in the County Court, without writ." And the 129th section further enacts, "that if any action shall be commenced after the passing of this act in any of her Majesty's Superior Courts of Re-

cord, for any cause other than those lastly hereinbefore specified, for which a plaintiff might have been entered in any Court holden under this act, and a verdict shall be found for the plaintiff, for a sum less than 20*l.* if the said action is founded on contract, or less than 5*l.* if it be founded on tort, the said plaintiff shall have judgment to recover such sum only, and no costs; and if a verdict shall not be found for the plaintiff, the defendant shall be entitled to his costs as between attorney and client, unless in either case the Judge who shall try the cause shall certify on the back of the record that the action was fit to be brought in such Superior Court."

Prentice, against the rule, contended that the words "on balance of account or otherwise," did not include the case where there had been no settlement of account, and the plaintiff's claim was reduced below 20*l.* by a set-off at the trial; citing *Jones v. Harris*, 1 Dowl. P. C. 374; *Pitts v. Carpenter*, 2 Strange, 1191; *Gross v. Fisher*, 3 Wils. 48.

H. Clark, in support of the rule, cited *Hayter v. Fish*, 18 Law J., C. P., 65.

The Court said, that the 129th section of the 9 & 10 Vict. c. 95, deprived the plaintiff of costs in cases "for which a plaintiff might have been entered in any Court holden under this act." Here, however, the claim was above 20*l.*, and had been reduced by a counter-claim of more than 20*l.* by way of set-off to less than 20*l.* The words in the 58th section, "on balance of account," did not relate to a set-off, but to an actual balancing of accounts. If cases of set-off were within the jurisdiction of these Courts, they would have to decide on two debts, both above 20*l.* Nor could the plaintiff reduce his claim to the sum the debt would be reduced by the set-off, as in that case he would abandon the rest of his claim, and the defendant might then plead set-off to the amount of 20*l.* and bring an action for the residue, to which claim the plaintiff could not plead his debt, as by his plaint in the County Court he would have abandoned it, and thus the plaintiff would be put to great hardship. The present case, therefore, did not fall within the jurisdiction of the County Courts' Act, and the suggestion to deprive of costs must be refused.

Rule *nisi* discharged.

Court at Eschequer.

London, Brighton, and South Coast Railway Company v. Goodwin. April 19, 1849.

BOND FOR FIDELITY OF CASHIER TO RAILWAY COMPANY.

Held, that a bond by a father for the fidelity of his son as cashier to a railway company, was not rendered void by the amalgamation of other railway companies with the original company, whereby an increase of duty and responsibility had been caused.

THIS was an application to reduce to a nominal sum, the damages recovered in an action brought by the company on a bond given by

the defendant in guarantee for his son as the cashier to the London and Croydon Railway Company. Afterwards this company was amalgamated with other railways under the present title, and all their contracts, covenants, bonds, and agreements were transferred to the new company. The defendant's son, who was placed over some clerks in whose accounts certain inaccuracies were found, was in the habit of making up the deficiency of one day's account by drawing on the receipts of the current day, by which means the deficiency was concealed. The plaintiffs had obtained a verdict for 246*l.*, at the trial before Mr. Baron Parke.

Shee, S. L., in support of the application, urged, that the defendant's liability had ceased to exist, as the duties and responsibility of his son had been materially affected by the amalgamation, and that the son was not responsible for the deficiency occasioned by the clerks.

The *Court* refused the rule, and said that the liability of the son or of the defendant was not altered by the additional duties thrown on the son by the amalgamation by the companies. The son had not paid over, day by day, the receipts of the company, which he ought to have done, but had, as it were, lent his own money to the clerks to make up the daily deficiency, and which the father therefore was bound under his bond to make good.

Rule refused:

Court of Exchequer Chamber.

Regina v. Wood. April 30, 1849.

APPROPRIATION OF FOUND CHATTEL.— FELONIOUS INTENT.

Held, upon error to the Exchequer Chamber, that as the finding of the chattel could not have been with any felonious intent to commit a larceny—the subsequent conversion was free also from the same; and conviction ordered to be quashed and judgment arrested.

UPON an indictment for stealing a bank note, which the prisoner had picked up in the public highway, and converted to his use, it appeared that when he picked up the note, he did not know to whom it belonged, but that a few days afterwards he heard who was the owner, and then changed the note and appropriated the proceeds. The prisoner was found guilty, but Mr. Baron Parke, who presided at the trial, at the Huntingdon Summer Assizes, reserved the point for the consideration of the Court, whether there was any felonious intent.

The *Court* held, that in the first instance the prisoner could have no felonious intent to commit larceny, and that there was none in the subsequent conversion. The conviction must, therefore, be quashed and judgment arrested.

BUSINESS OF THE COURTS.

CHANCERY CAUSE LISTS.

Trinity Term, 1849.

Lord Chancellor.

APPEALS.

Knight v. Majoribanks, Ditto *v. Gibbs*, appeal.
Scarf v. Soulbey, appeal.
Onslow v. Wallis, appeal.
Cuddon v. Morley, appeal.
Chambre v. Siggers, appeal.
M'Intosh v. Great Western Railway Co., appeal.
Attorney-General v. Jones, cause by order.
Phillipson v. Gatty, *Gatty v. Phillipson*, appeal.
Staniland v. Willott, appeal.
Coward v. Coward, appeal.
Cooke v. Cholmondeley, Ditto *v. Vaux*, appeal.
Cole v. Scott, appeal.
Rackham v. Siddall, appeal.
Williams v. Powell, Ditto *v. Davis*, *Price v. Powell*, appeal.
Monro v. Taylor, appeal.
Duncan v. Luntley, appeal.
Malcolm v. Scott, 4 causes, appeal.
Boothby v. Boothby, appeal.
Fuller v. Bennett, appeal.
Watson v. Masters, appeal.
Dodson v. Powell, appeal.
Hawkins v. Jackson, appeal.
Hunter v. Daniel, appeal.
Cowell v. Watts, *Watts v. Cowell*, appeal.
Newman v. Hutton, 3 causes, appeal.

Andrew v. Andrew, appeal.
Marks v. Solomons, appeal.
Purchase v. Shallis, appeal.
Attorney-General v. Gibbs, *Rock v. ditto*, appeal.
Bagshaw v. East India Railway, ditto *v. ditto*, 2 appeals
Masters v. Scales, 5 causes, rehearing.
Loder v. Clarke, appeal.
Miller v. Priddon, appeal.
Cross v. Sprigg, appeal.
Sanderson v. Cockermouth and Workington Railway Company, appeal.
Griggs v. Staples, appeal.
Dawson v. Brinckman, appeal.

Master of the Rolls.

JUDGMENTS (reserved.)

{ *Hooper v. Salmon*.
{ *Tugwell v. Hooper*.

PLEAS AND DEMURRERS.

Stand over, *Dean of Ely v. Gayford*
Do., Same *v. Waddelow*.
Do., Same *v. Same*.
Do., Same *v. Bliss*.
Do., Same *v. Shillito*.
Do., Same *v. Hensley*.
S. O. until hearing, *Lewis v. Baldwin*, objection for want of parties.
Chambers v. Howell, plea.
Same *v. Same*, plea.
Mich. Term, *Whitfield v. Day*, dem.

Chambers v. Howell, plea.
Groom v. Kennard, dem.

CAUSES.

S. O. To present petition, Stourton v. Jerningham.

S. O. till petn. of rehearing disposed of. { Hemming v. Archer, } fur. dirs. and costs.
Same v. Same, }
Same v. Same, }
Same v. Same, }
Raworth v. Same, }

Part heard { Hemming v. Archer, } Re-hearing.
Same v. Same, }
Same v. Same, }
Same v. Same, }
Raworth v. Same, }

Stand over, till after Report on exceptions. { Gas Light and Coke Com. v. Symonds } fur. dirs. and costs.
Symonds v. Gas Light and Coke Com. }
Stillman v. Gas Light and Coke Com. }

After Term, Christy v. Courtenay.

Ditto Same v. Same, fur. dirs. & costs.

S. O. to { Baynton v. Hooper. }
amend. { Same v. Same. }

S. O., until case returned from Q. B., Wilson v. Eden, fur. dirs. and costs.

Stand over, Bennett v. Cooper, fur. dirs. and costs.

Stand over, Biggs v. Naylor.

Stand over to add parties, Johnson v. Thomas.

Stand over until after trial of action at law. { Hele v. Bexley, } exons.
Same v. Same, } fur. dirs.
Same v. Same, } and costs.
Same v. Bowyer, }
Same v. Donovan, }

Mich. Term, Vallance v. Amiot, exons.

Mich. Term, Hargrave v. Hargrave, fur. dirs. and costs.

Rudge v. Winnall, fur. dirs. costs and petition.

After Term, Senhouse v. Hall, fur. dirs. and costs.

Stand over to amend, { Ballenger v. Hawes, } fur. dirs. costs and petition.
{ Buck v. Dennis, }

Attorney-General v. Chensay.

After Tm., Read v. Smith, fur. dirs. and costs.

Sturge v. Sturge.

Hamilton v. Hamilton.

Pooley v. Pooley.

{ Gosset v. Vivian, } exceptions, and
{ Same v. Same, } fur. dirs. & costs.
{ Vivian v. Same, }

{ Attorney-General v. Wiggiston Hospital. }
{ Same v. Vaughan. }

{ Home v. Sterling, } fur. dirs. and costs.
{ Same v. Same, }

{ Hope v. Hope } Equity reserved and petn.
{ Same v. Same, }
{ Same v. Same, }

{ Shuff v. Holdaway, } fur. dirs. and costs and petition.
{ Same v. Shuff, }

{ Harrison v. Grimwood, } fur. dirs. and costs.
{ Same v. Fuller, }
{ Same v. Newman, }
{ Newman v. Harrison, }

NEW CAUSES.

Hunt v. Hunt.

Baynton v. Hooper.

{ Rodick v. Gandell. }
{ Same v. Turner. }

Lord Crews v. Robson.

{ Attorney-General v. Jesus Hospital, } fur. dirs. & costs.
{ Same v. Lyall, }

Short, Wadson v. Tetley.

Edwards v. Tuck.

Same v. Sutton.

Walpole v. Boughton.

{ Attorney-General v. Marquis of Bristol }
{ Same v. Hine. }

{ Attorney-General v. Aubrey. }
{ Same v. Pemberton. }

Jewson v. Hart.

Hardey v. Green.

Dupper v. Glasse, fur. dirs. and costs.

Short, Rudge v. Winnall.

Vice-Chancellor of England.

PLEAS, DEMURRERS, CAUSES, EXCEPTIONS, AND FURTHER DIRECTIONS.

To fix a day, Brooke v. London and Westminster Bank, Ditto v. ditto, dem.

S. O., Attorney-General v. Grainger.

Coleman v. Fielden.

S. O. (i, Menlove v. Hogg, Ditto v. Trustees of Liverpool Docks.

S. O. G., Ditto v. Ditto.

Allen v. Wilson.

Hobson v. McKenzie.

S. O. G., Holl v. Gedge.

May 24, Boyd v. Boyd, Ditto v. Saunders, part heard, cause and 2 petitions.

Duke D'Uzes v. East India Company.

S. O. G., Foster v. Foster, Ditto v. Greaves.

S. O. G., Crewell v. Bateman, fur. dirs. & costs.

Roberts v. Evans.

Bell v. Thornton.

Hawkins v. Hamerton.

Skinner v. Skinner, fur. dirs. and costs.

Burleigh v. Farratt.

Raincock v. Young, Ditto v. ditto.

Jeffery v. Jeffery.

Watts v. Watts.

Markeating v. Smith.

Barnard v. Earl of Liverpool.

Clayton v. Haynes.

Lander v. Weston, exons.

Attorney-General v. Cother.

Hubbard v. Evans, Ditto v. ditto.

Countess of Mornington v. Earl of Mornington, Ditto v. Powell.

May 30, Barton v. Dixon, Ditto v. Stears.

S. O., Roberts v. Roberts, fur. dirs. and costs.

Cole v. Sewell, fur. dir. and costs.

Evans v. Evans, Ditto v. Williams, exons. 2 sets.

Evans v. Evans, Ditto v. Williams, fur. dirs.

Gould v. Gould.

Parsons v. Benn.

Short, Ogle v. Robinson.

Lord Lyttleton v. Jefferies.

Short, Pocock v. Johnson.

Pierce v. Griffith.

June 7, Bell v. Hoyes.

Hopkinson v. Metaxa, Ditto v. ditto, fur. dirs. & costs.

Short, Whitmore v. Du Buisson.

June 9, Coxon v. Coxon.

Hughes v. Pride, fur. dirs. and costs.

June 11, Whitehead v. Cozens.

Miller v. Huddleston, fur. dirs. & costs.

Knight v. Cox, ditto.

Shadbolt v. Thornton, ditto.

Short, Hodgkinson v. Gilbert, ditto.

Vice-Chancellor Knight Bruce.

CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

Powell v. Hall, demurrer.
 Camm v. Wright, plea.
 Swann v. Woodman, demurrer.
 Stanley v. Bulkeley.
 S. O., Hughes v. Scarborough.
 S. O. G., Powell v. Dodson, Ditto v. ditto, part heard.
 May 25, Aftato v. Phillips.
 May 25, Ditto v. ditto.
 S. O. until mentioned, James v. Gwynne, Ditto v. Evans, Ditto v. Harris.
 May 23, Rudd v. Speare, Ditto v. Headly, Ditto v. Bones.
 Brearcliffe v. Doubleday, 2 causes.
 Briggs v. Harmer.
 Wrigley v. Swainson, Swainson v. Wrigley.
 Rogers v. Price.
 Evamy v. Jones, Jones v. Evamy.
 Roberts v. Jones.
 May 29, Leach v. Baker.
 S. O. G., Holloway v. Berkeley.
 The Prince Albert v. Strange.
 Attorney-General v. ditto.
 Thorodike v. Hunt.
 May 23, Duncan v. Ogston, Ditto v. Johnson, fur. dirs. costs and petition.
 Holgate v. Wright.
 May 28, May v. Grave, 6 causes, Ditto v. ditto, exons. and fur. dirs.
 Morgan v. Annis, Ditto v. Parsons.
 May 26, Robinson v. Mostyn.
 May 26, Wilkin v. Wingate.
 S. O., White v. Everest.
 May 30, Hutchison v. Teycheuné.
 May 23, Lanaghan v. Smith, ditto v. ditto, Smith v. Laugshan, fur. dirs. and costs.
 June 1, Heath v. Lewis.
 June 1, Risk v. Starkey.
 June 2, Carrington v. Fall.
 Bradley v. Bycroft, fur. dirs. and costs.
 Stutely v. Wells, 5 causes, ditto.
 Smith v. Smith, ditto.
 Everett v. Greatwood, ditto.
 June 8, Mendis v. Brandon.
 June 8, Bradshaw v. Drake.
 June 9, Fowler v. Swaffer.
 Steward v. Davis, fur. dirs. and costs.
 Tarratt v. Tarratt, ditto.
 Short, Hall v. Wright.

Vice-Chancellor St. Ignace.

CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

June 12, Chandler v. Corke.
 Nesfield v. White.
 Marshall v. Sladden.
 May 24, Lassence v. Lescher, cause, Ditto v. Tierney, fur. dirs. and costs.
 May 22, Reynell v. Sprye, Ditto v. ditto, Sprye v. Reynell, Ditto v. ditto, part heard.
 Attorney-General v. Murdock.
 Ditt v. Hoyes, Hoyes v. Kinderaley, Gillan v. Hoyes.
 Dyer v. Sturgis.
 S. O. C., Ward v. Swift, fur. dirs. and costs.
 Marquis of Londonderry v. Ovingdon, 3 causes.
 May 24, Marshall v. Jewson.
 May 25, Osborn v. Garrard.
 May 28, Challis v. Harris.
 May 29, Bliss v. Brady.
 May 23, Coventry v. Earl Lauderdale, Ditto v. Coventry, exons. and fur. dirs.

Field v. Bentley, fur. dirs. and costs.
 June 4, Howard v. Reynardson.
 June 4, Mayall v. Milne.
 June 5, Benasuan v. Nehemias, Ditto v. ditto.
 Sentence v. Porter, fur. dirs. and costs.
 Casson v. Woodcock.
 Edlin v. King, Ditto v. Stansfield.
 Curtis v. Fulbrook, 2 causes.
 Ransford v. Griffiths.
 Hughes v. Stable, Piper v. Do., Hughes v. Savery, fur. dirs.
 Bond v. Harvey.

COMMON LAW CAUSE LISTS.

Queen's Bench.

NEW TRIALS TRINITY TERM 1848.

Easter Term, 1848.

Kent.—Doe d. Warren and another v. Brydges.
 Brydges tent.—Sir F. Theisger.
 (Stands over till after Michaelmas Term, 1849.)
 Sussex.—Forth v. Simpson—Serjeant Shee.
 (Part heard.)
 Leicester.—Baily and another v. Macaulay—Whitehurst.
 Warwick.—Same v. Pearson—Same.
 (To come on for argument with Baily v. Haines, Michaelmas Term, 1848.)
 Liverpool.—Hassall and another v. Cole—Knowles.

Michaelmas Term, 1848.

Middlesex.—Gardner v. Slade and wife—Crowder. (Part heard.)
 Middlesex.—Hulse and others v. Esdaile and others—Sir F. Theisger.
 London.—Baum and others v. Ricketts and others—Martin.
 London.—Baily and another v. Haines—Humfrey.
 London.—Same v. Macaulay—of Easter Term last. (To come on for argument with this.)
 London.—Same v. Pearson—Ditto.
 London.—Same v. Bracebridge—Hilary Term, 1849.

(To come on for argument here.)

London.—Small v. Nairn—Sir F. Theisger.
 Essex.—Sturges and another v. Cooper and another—Serjeant Shee.

(Stands for arrangement.)

Essex.—Doe d. Carter v. Barnett—Chambers.
 Devon.—Doe d. Moore and another v. Dunning and another—Butt.

Bristol.—Scott v. Ferris—Serjeant C. C. Jones.
 Cardigan.—The Queen v. John Bowen—W. H. Watson.

York.—The Queen v. Inhabitants of Brightside Bierlow—Hall.

York.—The Queen v. Inhabitants of Attercliffe cum Darnall—Same.

York.—The Queen v. Inhabitants of Tinsley—Same.

Durham.—Jenkyns v. Hutchinson—Martin.

Lancaster.—Robinson v. Waddington and another—Pashley.

Liverpool.—Walley v. Stone and others—Martin, for defendant, M'Connell.

Liverpool.—Company of Proprietors of Rochdale Canal v. King and others—Martin.

Liverpool.—James and others v. Lynn, clerk—Knowles.

Liverpool.—Jenkyns v. Brown and others—W. H. Watson.

Cambridge.—Hammond v. Bendythe—Same.

Cambridge.—Fuller v. Brown and another—Serjeant Byles.
Cambridge.—Preston v. Titchmarsh—O'Malley.
Suffolk.—Doe d. Marriott, clk., v. Marquis of Hertford—Andrews.
Suffolk.—Rudland v. Mills and others—Serjeant Byles.
Oxford.—Allen v. Gilkes and another—Whiteley.
Oxford.—Same v. Same—Serjeant Talfourd.
Worcester.—Doe d. Mence v. Hadley—Whiteley.
Stafford.—Bate v. Pano—Keating.
Tried during Michaelmas Term, 1848.
Middlesex.—Gidley v. Austin—Crowder.
Hilary Term, 1849.
Middlesex.—Hawkinson and another, executors, &c., v. Alcock—Humfrey.
Middlesex.—Gadsby v. Estall—Sir F. Thesiger.
Middlesex.—Morrell and another v. Wootton, survivor, &c.—Humfrey.
Middlesex.—Daubney v. Phipps—Same.
Middlesex.—The Queen v. Smith and others—Sir F. Thesiger.
Middlesex.—Same v. Same—Cockburn.
Middlesex.—Neeves v. Burrage—Knowles.
Middlesex.—Osterman v. Bateman—Gurney.
London.—Dawson and others v. Hay—Temple.
London.—Job v. Hudson, gent., one, &c.—Humfrey.
London.—Bailey and another v. Bracebridge—Same.
London.—Wilson v. Holden—Sir F. Thesiger.
Tried during Hilary Term, 1849.
Middlesex.—Arden v. Sullivan—Petersdorff.
Middlesex.—Doe d. Howe v. Thornton—Cox.
Easter Term, 1849.
Middlesex.—Keene v. Ward—Bramwell.
Middlesex.—Colombine v. Pennall and another—Attorney-General.
Middlesex.—Gaskill v. Skene—O'Malley.
Middlesex.—Margeson v. Wright—Chambers.
Middlesex.—Doe d. Morrison and others v. lover—Chambers.
Middlesex.—Robins v. Tripp—Heaton.
Middlesex.—Bass and another v. Wells—Martin.
Middlesex.—Chapman v. Speller—Humfrey.
Middlesex.—Wakeman v. Lindsey and others—Udall.
London.—Huntley v. Donovan—Chambers.
London.—Charman v. Steere, Esq., Sheriff, &c.—Serjeant Shea.
London.—Fussell, P. O. v. Lewis—W. H. Watson.
Hants.—Doe d. Commissioners of Woods and Forests v. Bone—Butt.
Wilts.—Doe d. Lord Arundel and others v. Fowler—Greenwood.
Wilts.—The Queen v. Inhabitants of Cricklade—Same.
Devon.—Brown and another v. Coleridge, clerk, &c.—Crowder.
Devon.—Drew and another v. Same—Same.
Devon.—Mayne v. Same—Same.
Devon.—Hannaford v. Gill—Butt.
Cornwall.—Williams v. Teague and another—Cockburn.
Cornwall.—Doe d. Stevens v. Stevens—Crowder.
Somerset.—Barwell and others v. Inhabitants of Hundred of Winterstoke—Same.
Somerset.—Doe d. Welsh and others v. Notley—Butt.
Northampton.—Powell v. Hibbert—Humfrey.
Northampton.—Doe d. Hubbard v. Hubbard—Whitehurst.

Lincoln.—Allison v. Draper—Same.
Lincoln.—The Queen v. Betts and others—Same.
Lincoln.—Same v. Same—Humfrey.
Warwick.—Edwards v. Knowles—Whitehurst.
Cambridge.—Morton v. Tibbutt—Worledge.
Durham.—Humphries v. Brogden, secretary, &c.—Knowles.
York.—Livingston, surviving partner, &c. v. Whiteing—Pashley.
Liverpool.—Manchester, Sheffield, and Lincolnshire Railway Co. v. Blinkhorn—W. H. Watson.
Essex.—Doe d. Davenish v. Moffat—Chambers.
Essex.—Leary v. Patrick and another—Same.
Sussex.—Hurst v. Hurst—Serjeant Shea.
Sussex.—Gates v. Gosden—Hawkins.
Surrey.—Robinson and another v. Banwen Iron Company—Serjeant Channell.
Surrey.—Dimes v. Petley—Serjeant Shea.
Worcester.—Phillipotts and others v. Evers and another—Serjeant Talfourd.
Stafford.—Banks v. Baldwin—Same.
Stafford.—Doe d. Sayer and others v. Hatton—Gosdon.
Salop.—Griffiths v. Marcy—Serjeant Talfourd.
Mounmouth.—Williams and others v. James—Same.
Chester.—Doe d. Reade and others v. Hall—Sir F. Thesiger.

SPECIAL CASES AND DEMURRERS.

Trinity Term, 1849.

Whitmore and Co.—Morris, Bt., v. Dk. of Beaufort, dem.

(Stands over by consent.)

Johnson.—Everest and others v. Humphery, dem.

(Stands over by arrangement.)

Wade and P.—Doe d. Payne v. Plyer, special case.

(Part heard.)

M'Leod and P.—Smith and another v. Alexander and another, dem.

Maples and Co.—Small and others v. Gibson, N. O. V.

Sanger.—Howley, W., extrix, &c. v. Knight, sued with another, dem.

Crafter.—Milner v. Janes, dem.

Cree and Son.—Wilson v. Eden, Bt., special case.

Gatty and T.—Doe dem. Her Majesty v. Archbishop of York, special case.

(Appointed for 1st June.)

Marson and D.—Marson and another v. Lund, dem.

Wyche.—Flockton and others v. Hall and others dem.

Beddome and W.—Dowdall v. Hallett and others, dem. to plaintiff's declaration.

Beddome and W.—Same v. Same. dem. to defendant Clarke's pleas.

Beddome and W.—Same v. Same, dem. to defendant Allan's pleas.

Beddome and W.—Same v. Same, dem. to defendant Hatfield's pleas.

Kinder.—Ryan v. Giles, dem.

Rushworths.—Smith v. Bennett, dem.

Vickery.—Ricketts v. Loftus, dem.

Palmer & Co.—Evelyn v. Worsfold, special case.

Beddome and W.—Steele v. Hoos, special case.

Lepand and Co.—Russell v. Barnard, dem.

Beddome and W.—Dewar and another v. Hallett, sued with others, dem.

Beddome and W.—Same v. Whittam, sued with others, dem.

Beddome and W.—Same v. Hatfield, sued with others, dem.

Wilson.—Pye v. Plant and others, dem.
Sanger.—Palmer, executors, &c. v. Welch, dem.
Fry and Co.—Cannon v. Wetherill, dem.
Johnson and Co.—Woolley and another v. Vernon, dem.

Philp.—Rossetti v. Watling, dem.
Eden—Hudson v. Elkins, dem.
Maples and Co.—Huntley and others v. Pinto and another, special case.

Ravenscroft.—Houlden v. Smith, Esq., special case.

Whitaker.—Bunter and another v. Crosswell, clerk, special case.

Dickson and O.—Whitmore and others, assignees, &c. v. Hale and another, dem.

Yallop.—Armitage v. Insole and another, dem.
Lane and P.—Sharp v. Fuller, dem.

Oliverson and Co.—Thompson, Esq., M. P., v. Igham, Esq., and another, dem.

Patten.—Meyrick and another, executors, &c. v. Anderson, executrix, dem.

Nixon.—Ghislin v. Deen, dem.

Sudlow and Co.—Sayles v. Blane, dem.
Holcombe.—Tull v. Tull, dem.

Cox and W.—Freer v. Salmon, dem.
Lacy and Co.—Chrisp v. Atwell, dem.

Lyon and Co.—Wray v. Chapman and another, special case.

Trinder and E.—Birkinhead, Lancashire, and Chester Junction Railway Company v. Chadwick, dem.

Lewis and Co.—Keober v. Gomersall, dem.
Clowes and Co.—Bittlestone and others v. Eastern Counties Railway Company, special case.

Sandys.—Phené v. Bowles, dem.
Raw.—Adams v. Andrews, dem.

F. Smith.—Davis v. Dixon and another, N. O. V.
Martin.—Franks v. Edwards, dem.

Stronghill.—Stronghill v. Buck, dem.
White and Co.—Cook v. Field, dem.

Cox and S.—Knight and others v. Faith and another, special case.

Chaplin.—Toller v. Attwood, special case.
Scadding and Son.—Sims and another v. Donovan, dem.

Gill.—Meyer and another v. Cockburn, dem.
Sargent.—Morris v. Walker, dem.

Same.—Bennett and others v. Batten and others, dem.

Wathen and P.—Barnes and another v. Howard, dem.

Tilson and Co.—West Cornwall Company v. Mowatt, special case.

Pittendreich.—Staunton and another v. Wood and others, dem.

Bankart.—Passenger v. Measam, dem.

ENLARGED RULES.

For Trinity Term, 1849.

First Day.

Allen and others, executrix, v. Goodchild, for full Court.

Freeman, a pauper, v. Rosher, for full Court.
Universal Salvage Company v. Winthrop, for Bail Court.

Same v. Norcott, for Bail Court.
Foster v. Dawson, for Bail Court.

Same v. Loftus, for Bail Court.
Swindall v. Loftus, for Bail Court.

Day v. Paupiere, for full Court.
The Queen v. The London and North Western Railway Company, for full Court.

The Queen v. Surveyors of Woodditton, for full Court.

The Queen v. Justices of Oxon, for Bail Court.
The Queen v. The Great Western Railway Company, for full Court.

The Queen v. Inhabitants of Moreton, for Bail Court.

Second Day.

In re plaint in County Court between Hadden and Shearman, for Bail Court.

Noyes v. Smith, for Bail Court.
Halket v. Merchant Traders Ship Association, for Bail Court.

Dyke v. Brewer and another, for full Court.
Ferris v. Curzon, for Bail Court.

Jordan v. Binckes, for Bail Court.
In re Triston, for Bail Court.

The Queen v. South Wales Railway Company, for full Court.

The Queen v. South Wales Railway Company, for full Court.

The Queen v. Justices of Suffolk, for Bail Court.

3rd Day.

Stevens v. Lumley, for full Court.
In re Jenner, for Bail Court.

Falkner v. Dow, for Bail Court.
The Queen v. Mayor of Bath, for Bail Court.

Same v. Same, for Bail Court.
Same v. Ridley, for Bail Court.

Common Pleas.

DEMURRER PAPER.

For Trinity Term, 1849.

Tuesday . . . 22 }
Wednesday . . . 23 } Motions in arrest of judg-
Thursday . . . 24 } ment.

Friday . . . 25 }
Wednesday, May 30 Special Arguments.

Engstrom and others v. Brightman and others.
Hill v. Kempshall.

Wood v. Governors and Company of Copper Miners in England.

(The award entered subsequently to be argued with this demurrer.)

Tate v. Hitchings, sued with others.
(May 2nd partly heard, to be continued on the 1st day of Trinity Term.)

Robinson and ux. v. Marquis of Bristol and others.

Peterson and another v. Davis.
Kinnorsley v. Knott.

Doe dem. Brammall and another v. Collinge.
Westropp and others v. Solomon.

Fagan v. Harrison.
The Bawon Iron Company v. Barnett.

Edwards and others v. Jevons.
Johnson v. Frew.

Gibbons v. Vouillon.
Greene v. Reece.

Wood v. Governor and Company of Copper Miners in England.

(To be argued with demurrer.)
Porcher and another v. Gardner and others.

Bell and others, assignees, v. Bidgood.
Johns v. Dickinson.

Doe Cannon and another v. Rucaastle.
Bell and other assignees v. Cory, public officer.

Cuthbert v. Walker.
Jones v. How and another.

Sterry, executrix, v. Clifton.

Reid v. Simpson.
 Dakin, administratrix, v. Brown and another,
 Gooch and others v. Johnson.
 Phillips and another v. Pickford,
 Catterall administrator, v. Lees.
 Masters v. Ibberson.
 Navone v. Hadden and another.
 Temple v. Sleigh.
 Stone, clerk, v. Bishop of Winchester.
 Chrismus v. Beecham and another.
 Williams and another v. Samuel and another.
 Cunliffe and another v. Ley.
 Kilkenny and Valencia Railway v. Haggard.

Friday, June 1.—Special Arguments.

Anderson v. Coventry and another.
 Bodman, administratrix, v. Puddicombe.
 Littlewood v. Curtis.
 Parker v. Pinner and another.
 In re Foster.
 Hancock and another v. York, Newcastle, and
 Berwick Railway Company.
 Shirreff v. Taylor sued, &c.
 Harrison v. Round.

Wednesday June 6.—Special Argument.

REMANET PAPER FOR TRINITY TERM, 1849.

Enlarged Rules.

To 1st day.—Glenie v. Cook.
 Collman and another v. Beadman.

New Trials of Easter Term, 1848.

Middlesex, Franklin v. McLeon.
 London, Lewis v. Campbell. (May 8, Report read.)
 London, Walker v. Giles and another.
 London, Bayley v. Wilkins.
 London, Somerville v. Hawkins.
 London, Jones and another v. Broadhurst.
 Surrey, Pennell and others, assignees, v. Stephens. (Partly heard 30th Jan.)
 Somerset, Lee v. Lester.

New Trials of Trinity Term last.

Middlesex, Sawyer v. Langford.
 Middlesex, Thorogood, administratrix v. Bryan.
 (Cattlin v. Hills and others, moved in Hilary Term, 1849, to be argued with this rule.)

London, French v. Candy and others.
 London, Maxey v. Thomas.
 London, Rathbone v. Clarke.
 London, Green v. Slack.
 London, Groom and another, assignees, v. Watson.

London, Smith v. Thompson.

New Trials of Michaelmas Term last.

Middlesex, Morgan v. Field.
 Middlesex, Newton, Esq. v. John Chaplin.
 Middlesex, Russell v. Tubb.
 Middlesex, Smith v. Pritchard and others.
 London, Monaghan v. Walter and another.
 London, Fitch v. Martyr.
 London, Howard v. Mull.
 London, Smith and others v. The Hull Glass Co.
 London, Moss and others v. Smith and another.
 London, Stebbing v. Spicer.
 Denbigh, Doe Williams v. Sparrow.
 Chester, Worthington v. Warrington.
 Essex, Wilby v. Elston.
 Sussex, Doe (Eversfield) v. Troup.
 Surrey, Alcock v. Butt.
 Surrey, Cory v. Norfolk Railway Company.
 Surrey, Kempson and another v. Gayfere.
 Surrey, Hamilton v. Cochran.

Suffolk, Doe Archer and another v. Johnson and another.

Suffolk, Same v. Same.

Norfolk, Heyhoe v. Burge.

Norfolk, Morse and another v. Same.

York, Duncan v. Topham.

Hants, Pilgrim v. The Southampton and Dorchester Railway Company and another.

Bristol, Acraman and ors., assignees, v. Morrice.

Bristol, Lewis, exor., v. Lloyd.

Glamorgan, Doe Rogers v. Price and another.

Oxon, Hicks v. Gregory, exor.

New Trials of Hilary Term last.

Middlesex, Cattlin v. Hills and others.
 (To come on with Thorogood v. Bryan, moved in Trinity Term last.)

Middlesex, West v. Baxendale.

London, Barnes v. Troup.

London, Lindsay v. Barron and another.

London, Warren v. Peabody.

London, Vines v. Arnold.

New Trials of Easter Term last.

Middlesex, Graham v. Gould and another.

London, Gillingham v. Stuart.

London, Stansfield and others, assignees, v. Gladstone.

London, Kincaid and others v. Willis, secretary.

London, Same v. Same.

Berks, The Newbury and Speenhamland Gas and Coke Company v. Benny.

Cambridge, Crisp v. White.

Bucks, Tindal and another v. Deering, Esq.

Surrey, Vander Donckt v. Thellusson.

Sussex, Turner and another v. Kenworthy.

Yorkshire, Doe Strickland v. Strickland, Bart.

CUR. AD. VULT.

Morgan and another, executors, v. Earl Abergavenny.

Phillips v. Lewis.

Nickels v. Ross, jun.

Same v. Same.

Garrard v. Tuck (in dower).

Fitzgerald v. Fitzgerald.

Hopwood v. Thorn.

Russell v. Briant.

Beard v. Egerton and others.

Croll v. Edge.

Wright v. Collis.

Kinning v. Buchanan.

Munroe and others v. Bordier and another.

Duke of Brunswick v. Slowman and others.

Same v. Same.

Same v. Same.

Sands and others v. Clarke.

Barnes, admor., v. Ward.

Thompson v. Wesleyan Newspaper Association.

Same v. Same.

New Trial Rules suspended.

Ewebank v. Nutting and another.

Wild v. Harris.

Échequer of Pleas.

PEREMPTORY PAPER.

For Trinity Term, 1849.

To be called on the first day of the Term, after the motions, and to be proceeded with the next day, if necessary, before the motions.

30th Jan. 1849.—Adlington and others, v. Coles, clk.—Mr. Humfrey and The Attorney-General.

20th April, 1849. — *Adkins v. Applebee* and another—*Mr. Humfrey* and *Mr. Whitehurst*.

16th April, 1849.—*Levingston v. Rawcliffe*—*Mr. Crompton* and *Mr. Henderson*.

30th April, 1849.—*In re Sarah Elizabeth Tolson* and others—*Mr. Adolphus* and *Mr. H. Hill*.

26th April, 1849.—*Hassall v. Merchant Traders, Ship, Loan, and Insurance Association*—*Mr. J. Wilde* and *Mr. Martin*.

3rd May, 1849.—*Vickerman v. Beadle*—*Mr. H. Hill* and *Mr. Creasy*.

24th April, 1849.—*Partridge v. Gardner* and others—*Mr. Phipson* and *Mr. Keating*.

SPECIAL CASES.

For Trinity Term, 1849.

Remanets from Easter Term, 1849.

For Judgment.

Hollingworth v. Palmer, by order of *Nisi Prius*.
(Heard 25th April, 1849.)

Rigby and another v. The Great Western Rail. Co., by order of the Lord Chancellor.
(Heard 30th April, 1849.)

Doe d. Clift and another v. Birkhead, by order of *Baron Alderson*.
(Heard 2nd May, 1849.)

For Argument.

Harcourt and wife v. Wyman, proms, special case pursuant to award.

Same *v. Same*, debt. Ditto.

Same *v. Same*, covt. Ditto.

Doe d. Harcourt and others v. Wyman. Ditto.
(Part heard 22nd Jan. 1849, and 27th April, 1849.)

Bird and others, assignees, v. Brown and others, by order of *Nisi Prius*.

Spooner v. Payne, by order of Vice-Chancellor *Knight Bruce*.

Murray and another v. Murray and another, by order of *Baron Platt*.

Ker and others v. Pickering, by order of *Baron Platt*.

Teschemaker v. Renshaw, by order of *Nisi Prius*.

Hamilton and wife v. Spottiswoode, by order of *Baron Parke*.

Wilson v. J. Edeu, by order of the Master of the Rolls.

The Seaman's Hospital Society v. The Mayor, Aldermen, and Burgesses of the Borough of Liverpool, by order of *Baron Alderson*.

Beaumont v. Routledge and others, by order of *Nisi Prius*.

Mortimer v. Hartley, by order of *V. C. Knight Bruce*.

Follett and others, assignees, &c. v. Moore, by order of *Nisi Prius*.

Blaggrave v. Blaggrave and others, by order of *V. C. Knight Bruce*.

Morrell, sen., v. Fisher and another, by order of *V. C. Knight Bruce*.

Duke of Beaufort v. C. H. Smith, by order of *Baron Alderson*.

Norman v. Thompson, special verdict.

DEMURRERS.

For Trinity Term, 1849.

Remanets from Easter Term, 1849.

For Judgment.

Chandler v. Robinson, clk.

(Heard 22nd Jan. 1849.)

Ness v. Bertram and another.

(Heard 29th Jan. 1849.)

The Leeds and Thirsk Railway Company v. Fearley.

(Heard 20th Feb. 1849.)

Luccock and others v. Smith.

(Heard 2nd May, 1849.)

Higgins v. Pitt.

(Heard 15th May, 1849.)

For Argument.

Southby v. Bridgman.

(Stayed by injunction.)

Oliver v. Fielden and others.

Reid and another v. Allan.

Cross v. Allan.

Mostyn v. Eyton.

Simpson v. Lee and others.

Eyton and others, surviving petitioners, v. Little-dale and another.

Vallee and others v. Dumergue.

NEW TRIAL PAPER.

For Trinity Term, 1849.

FOR JUDGMENT.

Moved Michaelmas Term, 1848.

Stafford, Mr. Baron Rolfe.—*Sharrod v. London and North Western Railway Company.*—*Mr. Godson.*

(Heard 8th Feb. 1849.)

York, Mr. Justice Cresswell.—*Reedie, administratrix, &c. v. London and North Western Railway Co.*—*Mr. Knowles.*

(Heard 14th Feb. 1849.)

York, Mr. Justice Cresswell.—*Hobbitt, administratrix, v. Same*—*Same.*

(Heard 14th Feb. 1849.)

Moved Easter Term, 1848.

Middlesex, Mr. Baron Alderson.—*Glen v. Dungey and another.*—*Mr. Pearson.*

(Heard 9th May, 1849.)

Moved Michaelmas Term, 1848.

Middlesex, Lord Chief Baron.—*Boosey v. Purday*—*Mr. Attorney-General.*

(Heard 26th April, 1849.)

Middlesex, Lord Chief Baron.—*Same v. Same*—*Mr. Bovill.*

(Heard 26th April, 1849.)

London, Lord Chief Baron.—*Mackintosh and another v. Mitcheson*—*Mr. Martin.*

(Heard 7th May, 1849.)

York, Mr. Justice Cresswell.—*Brooke and another v. Faviell, jun.*—*Mr. Martin.*

(Heard 7th May, 1849.)

Newcastle, Mr. Justice Cresswell.—*Ness v. Armstrong*—*Mr. Watson.*

(Heard 8th May, 1849.)

Newcastle, Mr. Justice Cresswell.—*The Master Pilots and Seamen of Newcastle-on-Tyne v. Hammond*—*Mr. Martin.*

(Heard 12th May, 1849.)

FOR ARGUMENT.

Moved Easter Term, 1847.

London, Lord Chief Baron.—*Ralli v. Dennis-town*—*Mr. Attorney-General.*

(Ordered to be restored 19th April, 1849)

Moved Michaelmas Term, 1848.

Bristol, Mr. Justice Coleridge.—Cross v. Dando and others—Mr. Edwards.

Newcastle, Mr. Justice Cresswell.—Ness v. Gouthwaite—Mr. Martin.

(Stands over by consent.)

Newcastle, Mr. Justice Cresswell.—Ness v. Richardson—Mr. Watson.

(Proceedings stayed pursuant to an order of Mr. Baron Rolfe.)

Newcastle, Mr. Justice Cresswell.—Same v. Glaholm—Mr. Watson.

(Proceedings stayed pursuant to an order of Mr. Baron Rolfe.)

Carlisle, Mr. Justice Erle.—Aglionby v. Williams and others—Mr. Martin.

Liverpool, Mr. Justice Erle.—Clarke v. Holford, on affidavits—Mr. Attorney-General.

Moved after the 4th day of Michaelmas Term, 1848.

Middlesex, Mr. Baron Platt.—Bull, admor., &c., v. Ranken—Mr. Serjeant Wilkins.

Moved Hilary Term 1849.

Middlesex, Lord Chief Baron.—Elderton and another v. Lack and another—Sir F. Thesiger for defendant C. R. Hall, and Mr. Watson for defendant John Lack.

Middlesex.—Lord Chief Baron.—Homeraham v. Wolverhampton Water-Works Company.—Mr. Martin.

Middlesex, Lord Chief Baron.—Wheeler v. Stiles (in replevin).—Mr. Watson.

Middlesex, Lord Chief Baron.—Manning v. Wilkin—Mr. Watson.

London, Lord Chief Baron.—Thompson and another v. Bailey and others—Sir F. Thesiger.

London, Lord Chief Baron.—Nicholson v. Rayne—Mr. Martin.

London, Lord Chief Baron.—Richardson v. Barnes—Mr. Gurney.

London, Lord Chief Baron.—Wakley v. Healey and another—Defendant Healey in person.

Moved Easter Term, 1849.

Middlesex, Lord Chief Baron.—Ford v. Elliott and others—Mr. Cockburn for defendants Elliott and Henry.

Middlesex, Lord Chief Baron.—Same v. Same—Mr. M. Chambers.

Middlesex, Lord Chief Baron.—Wakley v. Cooke and another—Mr. Serjt. Wilkins.

Middlesex, Lord Chief Baron.—Broadwood and others v. Ashton—Same.

Middlesex, Mr. Baron Platt.—Scarislerick and others v. Kennard and another—Sir F. Thesiger.

London, Lord Chief Baron.—Trewheela v. Thomas—Mr. Wheatley.

London, Lord Chief Baron.—Woolfe v. Cobbold and another—Mr. Martin.

London, Lord Chief Baron.—Gann v. Hunter—Mr. Serjeant Shee.

London, Lord Chief Baron.—Gull v. Lindsay and another—Mr. Chambers.

London, Lord Chief Baron.—Walter v. Collick and another—Mr. Dowdeswell for deft. Collick.

London, Lord Chief Baron.—Same v. Same—Mr. E. James.

London, Lord Chief Baron.—Barker v. Richards and another—Mr. Lush for defendant Richards.

London, Lord Chief Baron.—Same v. Same—Mr. Bovill for defendant Shadbolt.

London, Lord Chief Baron.—Cobbett v. Grey, Bart., and others—Plaintiff in person.

London, Mr. Baron Platt.—Grapes v. Bunney—Mr. Cockburn.

Cambridge, Lord Chief Baron.—Fryer v. Gathercole—Mr. Frendergast.

Norwich, Lord Chief Baron.—Long v. Bignold—Mr. Serjt. Byles.

Maidstone, Mr. Baron Parke.—Midland Great Western Railway Company of Ireland v. Farquhar—Sir F. Thesiger.

Maidstone, Mr. Baron Parke.—Same v. Masterman—Same.

Kingston, Mr. Baron Parke.—Hoasking v. Phillips—Mr. Gurney.

Durham, Mr. Baron Alderson.—Cansfield (on affidavit) v. Blenkinsop—Mr. Atherton.

York, Mr. Baron Alderson.—Acomb v. Rawson—Mr. Martin.

Liverpool, Mr. Justice Coleridge.—Middleton and others v. Bamed and others—Mr. Attorney-General.

Liverpool, Mr. Justice Coleridge.—Bradshaw and another v. Gibb—Mr. Knowles.

Liverpool, Mr. Justice Coleridge.—Ripley v. McClure—Same.

Liverpool, Mr. Justice Coleridge.—Priehard and others v. Nicol—Mr. Martin.

Liverpool, Mr. Justice Coleridge.—Wollheim v. Paulet—Same.

Liverpool, Mr. Justice Coleridge.—Paulet v. Wollheim—Mr. Watson.

Liverpool, Mr. Justice Coleridge.—Rice v. Gerard, Bt.—Mr. E. James.

Worcester, Mr. Baron Platt.—Brettell and others v. Williams and others—Mr. Serjeant Talfourd.

Worcester, Mr. Baron Platt.—Same v. Same—Mr. Keating.

Stafford, Mr. Justice Coltman.—Douglas v. Douglas—Mr. Serj. Talfourd.

Stafford, Mr. Justice Coltman.—Stokes v. Shotton—Mr. Whateley.

Gloucester Mr. Justice Coltman.—Lloyd v. Jackson—Mr. Alexander.

Gloucester, Mr. Justice Coltman.—Baird v. Hodges—Mr. Keating.

Winchester, Lord Denman.—Gordon v. Rolt—Mr. Cockburn.

Dorchester, Lord Denman.—Saunders v. Topp—Mr. Crowder.

Dorchester, Lord Denman.—Hingston v. Kelly, Knt—Mr. Crowder.

Exeter, Lord Denman.—Mason v. Cole and others—Mr. Cockburn.

Exeter, Lord Denman.—Doe d. Buck and others v. Moyses—Mr. Serjeant Kingslake.

Bodmin, Lord Denman.—Toll v. Lee—Mr. Cockburn.

Taunton, Mr. Justice Williams.—Moore and others v. Jekyll, Clk.—Mr. Crowder.

Lincoln, Lord Chief Justice Wilde.—Thistlewood v. Radgard—Mr. Humfrey.

Leicester, Mr. Justice Maule.—Johnson v. The Midland Railway Company—Mr. Humfrey.

Warwick, Lord Chief Justice Wilde.—Brown v. Furness—Mr. Whitehurst.

Warwick, Lord Chief Justice Wilde.—Keene v. Dilke, Esq.—Same.

Warwick, Lord Chief Justice Wilde.—Same v. Same—Mr. Humfrey.

Swansea, Mr. Justice Erle.—Duke of Beaufort v. Morris—Mr. W. M. James.

Carmarthen, Mr. Justice Erle.—Manders and others v. Williams, Bt.—Mr. Chilton.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, JUNE 2, 1849.  
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BUSINESS OF THE COURTS.

ABSENCE OF COUNSEL. — REFRESHER FEES.—TAXES ON SUITORS.

THE discussion, (alluded to *ante*, p. 39,) which took place in the Court of Exchequer, at the Sitting after Term, upon striking out of the List of Demurrers certain causes, the counsel retained to argue which were on that day engaged at Nisi Prius, in the branch of the Court sitting at Guildhall, was subsequently renewed upon an application to restore one of those causes to its place in the list. The Court resolutely refused to accede to the application, but the matter was discussed with a degree of calmness and moderation, and in a conciliatory spirit, creditable alike to the Bench and the Bar. It was distinctly admitted by the judges,—the fact having been vouched on the personal recollection of both the Chief Baron and the present Attorney-General,—that when the act under which the Courts sit in Banco after Term, (the stat. 2 Vict. c. 32,) was passing through the House of Commons, an amendment, which Mr. (now Sir John) Jervis had announced his intention of moving, to secure the object, was withdrawn, upon the distinct understanding that the Courts of Common Law would not hold sittings in Banco after Term, during the periods fixed for the Nisi Prius Sittings at Guildhall. It was also conceded, that about twelve months since, in conformity with this arrangement, it was expressly and publicly stated, that the Court of Exchequer would not sit in future after Term contemporaneously with the Guildhall Sitting. It was observed, however, that since that period the public business had increased in a manner which rendered it inexpedient, if not impossible, to adhere to the arrangements agreed and acted upon heretofore, and the judges were

compelled to make extraordinary exertions to prevent an arrear of business from accumulating. It was added, that the efforts of the Judges could only be rendered effectual, if they obtained, as they expected, the assistance of the Bar.

Nothing could be more reasonable and becoming than what passed between the Bench and the Bar on this occasion, but still the difficulties of the position have not been met, nor has any one publicly suggested how the recurrence of the inconvenience felt upon this occasion is to be prevented hereafter.

For our own part, we see no other remedy than that long since suggested in this publication, that during the period fixed by the statute 1 W. 4, c. 70, s. 7, for holding sittings at Nisi Prius after Term, two judges should sit at Nisi Prius for each Court, the one for the disposal of Special Jury Causes, and the second for Common Jury Causes. If this arrangement were resorted to, the arrears at Nisi Prius would soon be reduced, and during the periods when the statute does not permit sittings at Nisi Prius, the judges and the profession would be able to devote their undivided attention and energy to the dispatch of business properly brought before the Courts sitting in Banc.

During the discussion in the Court of Exchequer upon the application of parties to have their causes restored, a subject was incidentally alluded to of some practical importance, and we are bound to admit that, *for once*, justice was done to a body upon whom so much is often unjustly and ignorantly thrown—we mean the Attorneys. Several cases in the new trial paper, which were unexpectedly called upon, (other cases preceding them in the list having been passed over as matter of convenience,) were struck out, because counsel were not in-

structed, and, upon inquiry, it turned out that the attorneys had not instructed counsel,—not expecting that the Court could have arrived at the cases in question, and were loath to instruct counsel at too early a period,—because according to the understood practice, if the brief was delivered too soon, and it became necessary to mark a refresher, the refreshing fee was not allowed on taxation. In other words, it was justly stated, that if the attorney delivered his brief before the Term in which the rule happened to be argued, the fee was not allowed, and if he refrained to deliver his brief, he ran the chance of having the cause struck out. As one of the Barons truly remarked, the attorney was naturally anxious to prevent the unnecessary expenditure of money by his client, but in order to avoid even a greater evil, the failure of justice, it was necessary that a party who delivered a brief when his cause *might* be called upon, should be allowed a refresher if the business of the Court occasioned the hearing of his cause to be postponed to a future Term or Sitting. What occurred in reference to this matter must be considered as highly satisfactory, and it is hoped will lead to the establishment of uniformity of practice with regard to the allowance of refreshers in all the Courts.

During the early part of the present week, another topic was incidentally discussed in the Court of Exchequer, in which the public and the profession are deeply interested, and to which we have repeatedly directed attention. It was stated at the Bar, in the argument on a special case, by Mr. W. H. Watson, who, it is well known, devoted much attention to the subject when a member of the legislature, that no less a sum than 40,000*l.* per annum was contributed by the suitors of the Courts of Queen's Bench and Exchequer only* to the Consolidated Fund, besides paying the judicial officers and all the expenses connected with the administration of justice in those Courts. According to this statement, the accuracy of which is unquestionable, in addition to paying the expenses of the Courts, the suitors pay 40,000*l.* per annum for justice! Mr. Baron Alderson frankly admitted, that the judges had fixed the fees to be paid by suitors upon too high a scale. The fees were fixed (the learned

Baron said) upon a mistaken estimate of what would be necessary to defray the expenses of the Courts, but the amount received exceeded the calculated expenses by the large sum mentioned, and the judges never had the opportunity of altering the arrangement by reducing the fees and rendering them commensurate with the expenses of maintaining the Courts. Here is a matter to which the efforts of all zealous and sincere law reformers might be judiciously and advantageously directed. It is an outrage upon justice and a disgrace to civilization, that the suitors of our Courts should be thus compelled to pay to the state for the liberty of appealing to the established tribunals to enforce their rights or redress their wrongs. It is not figuratively, but literally and emphatically—"a tax upon justice"—the most odious and indefensible of all taxes.

NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

HOLDING OF PETTY SESSIONS IN COUNTIES AND BOROUGHES.

12 VICT. c. 18.

An Act for the holding of Petty Sessions of the Peace in Boroughs, and for providing Places for the holding of such Petty Sessions in Counties and Boroughs. [11th May, 1849.]

1. *Petty Sessions of the Peace in Boroughs.*—

Whereas certain meetings of justices of the peace called Petty Sessions of the Peace are holden in and for certain divisions of the several counties of England and Wales called Petty Sessional Divisions, and important duties have lately been assigned to the justices attending at such Petty Sessions, and to their clerks, by certain acts of parliament, and it is desirable to declare and enact that the sittings of justices of the peace, or of a stipendiary magistrate, in and for every city, borough, or town corporate having a separate commission of the peace, or for any part thereof, shall be deemed a Petty Sessions of the Peace within the meaning of such acts, and that buildings or places at which such Petty Sessions may be holden shall, when necessary, be provided: Be it therefore enacted, That every sitting and acting of justices of the peace, or of a stipendiary magistrate, in and for any city, borough, or town corporate having a separate commission of the peace, or any part thereof, within England and Wales, at any Police Court or other place appointed in that behalf, shall be deemed a Petty Sessions of the Peace, and the district for which the same shall be holden shall be deemed a Petty Sessional Division, within the meaning of any acts of parliament, already made or hereafter to be made, having relation

* It was stated, in the course of this colloquy, that the fees received in the Court of Common Pleas, have not yet considerably exceeded the amount necessary to defray the expenses of the Court.

to such Petty Sessions, or to any business to be transacted thereat.

2. *Justices at General or Quarter Sessions, or the council in boroughs, may provide places for holding Petty Sessions. The justices or council may agree for the use of the County Court for that purpose.*—That in all cases where at present there are not, or where hereafter there shall not be, any fit or proper place for the holding of such Petty Sessions within any such Petty Sessional Division as aforesaid, in any county, riding, liberty, or division within England and Wales, or within any city, borough, or town corporate within the same, it shall be lawful for the justices of the peace for any such county, riding, liberty, or division, in General or Quarter Sessions assembled, and for the council or other governing body in any such city, borough, or town corporate having a separate commission of the peace, respectively, if they shall respectively think fit, from time to time to direct that fit and proper places be hired or otherwise provided for the holding of such Petty Sessions of the Peace within any such Petty Sessional Division as aforesaid, and that the expenses thereof and attendant thereon be paid out of the county rate or borough fund respectively, as the case may be: Provided always, that no such direction for hiring or otherwise providing any place for the holding of such Petty Sessions shall be given by the justices for any such county, riding, liberty, or division, so assembled as aforesaid, unless an application for that purpose, signed by the justices of the peace acting in such Petty Sessional Division, or the major part of such justices, shall have been transmitted to the clerk of the peace six weeks at the least before the holding of the General or Quarter Sessions at which such direction shall be given; and the clerk of the peace shall cause notice of such application to be published in some newspaper circulating in the same county, riding, liberty, or division, and in which the advertisements of county business are usually inserted, 14 days at the least before the holding of such General or Quarter Sessions: Provided always, that in every such case when it may be so required to provide a fit and proper place for the holding of such Petty Sessions as aforesaid, if it shall appear to the justices so assembled as aforesaid, or to the council of such city, borough, or town corporate respectively, that the County Court for the district is holden in any building or place which would be appropriate for the holding of such Petty Sessions, it shall be lawful for such justices or council respectively to contract with the treasurer of such County Court for the use and occupation thereof or of so much thereof as may be needed for the purposes of such Petty Sessions, for such time or times, weekly or otherwise, and at such annual rent, and subject to such conditions as to repairs, alterations, or improvements of such building or place, as may be agreed upon.

3. *Justices of the peace of different counties may provide places for holding Petty Sessions at the joint expense of such counties.* 11 & 12

Vict. c. 101.—That where justices of the peace, acting as such for two or more adjoining counties, ridings, liberties, or divisions, hold Petty Sessions on or near the common boundaries of such counties, ridings, liberties, or divisions, it shall be lawful for the justices of the peace of each of such counties, ridings, liberties, or divisions, upon such application as hereinbefore provided, to agree with the justices of the peace of the other or others of such counties, ridings, liberties, or divisions, that a place for the holding of such Petty Sessions be hired or otherwise provided within either of such counties, ridings, liberties, or divisions, and that the same be so hired or otherwise provided at the joint expense of such counties, ridings, liberties, or divisions, in such manner and proportions as in the said agreement shall be specified; and all the provisions of an act of the last session, intitled "An Act to provide for the Expenses of erecting and maintaining Lock-up Houses on the Borders of Counties," concerning the appointment and re-assembling of committees, filling up vacancies in committees, the proceedings of committees, the agreement to be drawn by them (except so far as respects the appointment and salary of a superintendent constable), and the powers of the Court of General or Quarter Sessions and of Committees in relation to such agreement, and the executing the same, and doing all necessary acts consequential upon such agreement, shall extend and be applicable to every agreement to be made under this act by and between the justices of two or more such counties, ridings, liberties, or divisions as aforesaid, as if such provisions had been here repeated, and the agreement to be made as aforesaid under this act, and the place to be provided for the holding of such Petty Sessions as aforesaid, had been substituted in such provisions for such agreement and lock-up house as in the said act mentioned.

NOTICES OF NEW BOOKS.

A Practical Treatise on the Appointment, Office, and Duties of a Receiver under the High Court of Chancery, with Precedents and Practical Directions. By WILLIAM HEATH BENNET, Esq., Barrister-at-Law. London: A. Maxwell & Son, 1849. Pp. 234.

WE recollect being asked lately by an old practitioner whether there was any work which treated fully of the Law and Practice relating to Receivers in Chancery, and whether any of the Lectures at the Law Institution would comprise that subject. This inquiry showed that a practical treatise on this subject was required by the Profession, and we think the present writer has supplied the want with ability and learning.

The first chapter comprises the cases in which Receivers have been appointed by the Court, and those in which the appli-

petition has been refused. In the second chapter Mr. Bennet treats of persons who may be proposed as Receivers, their duties, powers, and liabilities. In the third the accounts of Receivers, their salaries and special allowances are considered. In the fourth the mode of appointing and discharging Receivers are stated. And the fifth chapter relates to consignees and managers. These are followed by useful precedents and practical forms.

The objects sought by the appointment of a Receiver are to provide for the safety of property pending litigation, until the hearing of the cause, or during the minority of infants; and to preserve property in danger of being dissipated or destroyed.

Some of the general rules on this subject are thus stated by Mr. Bennet:—

"It may be considered and stated as a general rule, that a receiver will not be appointed where the rights, as between the plaintiff and defendant, are doubtful, if the defendant has obtained the legal estate without fraud, and no case of danger as to his security is alleged. As where the defendant had the legal estate, and also claimed as equitable owner in the absence of fraud or contrivance; the plaintiff claimed as heir at law, which character was not, however, admitted by the owner, the Court declined to appoint a receiver."

"It may also be considered as a general rule, that the Court will not interfere to take the possession of property from a party who has it under a legal title, except in cases of presumed fraud or waste; and in these cases it proceeds against the legal title with reluctance, compelled by judicial necessity, the effect of fraud, clearly proved, combined with imminent danger to the property, if the possession should not be taken under the care of the Court."

The cases of mortgagor and mortgagee, which so frequently occur in practice, are mentioned as follow:—

"A mortgagee who has the legal estate is not entitled to have a receiver appointed by the Court, as he can himself obtain possession of the mortgaged estate, and it is not a sufficient reason to depart from that general rule, that the tenants are numerous, and difficulties exist as to getting in and collecting the rents. If he has only an equitable mortgage, that is, if there be a prior mortgage, and the prior mortgagee is not in possession, the equitable mortgagee may have a receiver without prejudice to the first mortgagee's taking possession. The course to be pursued is, to redeem that mortgage; and, in taking the accounts, the first mortgagee will not be allowed any sums that he may have paid over to the mortgagor after notice of the subsequent incumbrance."

"In general, a receiver will not be appointed without the mortgagee being before the Court,

if a mortgage appears upon the face of the pleadings; but where the property is in possession of a third person, and the owner is abroad, the Court in favour of equitable incumbrances will protect it against the acts of the owner."

"A second mortgagee cannot have a receiver, the mortgagor living, without the consent of the first mortgagee, because the Court cannot prevent the first mortgagee from bringing an ejectment against a receiver."

The following is a useful summary of the decisions relating to the time when the application for a Receiver will be entertained by the Court:—

"It was formerly considered that in the case of infants the Court had jurisdiction on petition to pronounce an order for a receiver as well as for guardian and maintenance; but it was held by Lord Hardwicke that the Court had not jurisdiction to appoint a receiver unless a cause be depending."

"Before an appearance is entered for a defendant, the Court will, on a proper case being made, appoint a receiver. As where the grantor of an annuity, secured by an equitable charge on certain lands which were subject to a prior charge, went to reside abroad, but by his agent continued in the receipt of the rents and profits of such lands, the Court, on the application of the annuitant, appointed a receiver, although the grantor had not appeared to the suit. So where two parties entitled to property in equal moieties made an equitable mortgage of it, one of the mortgagors being out of the jurisdiction, and who had not been served with subpoena, the whole rents having been received by the other mortgagor, the Court granted a receiver. So where the defendant is out of the jurisdiction, on a proper case made; and a receiver has been appointed, on affidavit that defendant had absconded to avoid the service of a subpoena."

"A receiver may be appointed before answer, on motion and notice, where fraud or danger to the property is contemplated; as the reading of the respondent's affidavits, on showing cause against the application for the appointment, was considered by Lord Eldon as tantamount to an answer for this purpose. It is unusual, however, to move for a receiver before answer; but in strong cases it has often been done. Where, however, facts not founded on allegations in the bill are introduced into affidavits, in support of an application for a receiver, the Court will disregard them; and a defendant acts properly in not answering them. Of course, at any time after answer, if a sufficient case is made by the bill, and sufficient admissions contained in the answer, an application for a receiver will be entertained. So, it is submitted, at the hearing of the cause, a receiver may be appointed by the Court on a proper case made, although it may not have been prayed by the bill. But in a suit for redemption, the Master of the Rolls (Lord Langdale) refused, at the hearing, on the ap-

plication of the defendant, to grant a receiver against the plaintiff the mortgagor in possession, none being prayed for by the bill.

"The Court will, under certain circumstances, appoint a receiver *after decree*, although no receiver shall have been prayed by the bill."

For the authorities in support of these various points, we refer to the Treatise.

ADMISSION OF SOLICITORS.

The Master of the Rolls has appointed Monday, June 11th, at the Rolls Court, Chancery Lane, at three in the afternoon, for swearing in Solicitors.

Every person desirous of being sworn in on the above day must leave his Common Law Admission or his Certificate of Practice for the current year at the Secretary's Office, Rolls Yard, Chancery Lane, on or before Saturday, 9th June.

It is scarcely necessary to remind the Candidates for Examination in this Term, that they must attend on Tuesday the 5th instant before 10 o'clock.

J. H. Cancellor, Esq., one of the Masters of the Common Pleas, will preside, and the other Examiners will be Richard Harrison, John S. Gregory, Thomas Clarke, and Keith Barnes, Esquires. We understand that the number of Candidates will be 91.

COUNTY COURT CHARGES.

To the Editor of the Legal Observer.

SIR,—Can any of your readers favour me with an explanation of the following sums paid for fees in an action for 12l. odd, brought in the Bloomsbury County Court of Middlesex, against a defendant residing at Hampstead, about four miles from the Court.

	£.	s.	d.
On taking out summons . . .	1	0	2
On day of trial, <i>previous</i> to the hearing . . .	1	8	2
Together	2	8	4

As far as I can understand the Small Debts Act, the following are the fees due:—

	£.	s.	d.
Judge, on summons, above 10l.			
—contract . . .	0	3	0
Clerk, ditto . . .	0	3	0
High Bailiff, service, 3 miles extra at 4d. each . . .	0	2	0
Judge, hearing without jury . . .	0	10	0
Do. order . . .	0	3	0
Clerk, hearing without jury . . .	0	2	0
Do. drawing up order, &c. . .	0	2	6
High Bailiff, calling cause . . .	0	1	0
	1	5	6

The debt not being disputed, a judgment by

default could have been obtained in much less time than in this case from the Superior Court, at a cost out of pocket of 16s.

IGNORAMUS.

BARRISTERS CALLED.

Easter Term, 1849.

LINCOLN'S INN.

April 26.

Felix Richard Beddingfeld, Esq.

May 3.

William Ribton, Esq., B. A.
William Layton Lowndes, Esq., M. A.
William Brodrick, jun., Esq., M. A.
William Wilberforce, jun., Esq., M. A.
Francis George Bernard, Esq., M. A.
Arthur Cayley, Esq., M. A.
John Barton Arundel Acland, Esq., M. A.

INNER TEMPLE.

May 4.

Henry King, Esq., M. A.
Robert George Johnson, Esq.
William George Mount, Esq., M. A.
Jeremias Greene Jones Greene, Esq., B. A.
Thomas Green, Esq.
Charles Swinton Hogg, Esq., B. A.
George Browne, Esq., B. A.
William Patrick Adam, Esq., B. A.
Francis Ellis, Esq., B. A.
H. W. B. Thompson, Esq., B. A.
Nathaniel Joseph, Esq., B. C. L.
Thomas Collins, Esq., B. A.
J. Turton Woolley, Esq., B. A.
Thomas Lomax, Esq., B. A.
John Tomlinson Hibbert, Esq., B. A.
Charles Parke, Esq., B. A.

MIDDLE TEMPLE.

April 20.

Richard Samuel Sisson, Esq.

May 4.

William Pike, Esq.
Auguste Victor Garreau, Esq.
David Salomons, Esq.
Robert Sacheverel Wilmot Sitwell, Esq.
William Tappin Haly, Esq.
Henry Northcote, Esq.

GRAY'S INN.

May 2.

William Devoy, Esq.
John Raymond Grace, Esq.

ATTORNEYS' CERTIFICATE DUTY.

BILL FOR THE REPEAL OF THE TAX.

It will have been seen by the votes of the House of Commons of Saturday last, that Lord Robert Grosvenor has very promptly given notice of his motion to bring in the bill for repealing the Annual Tax on Attorneys. Tuesday the 19th instant has been fixed for the discussion, and it will now be the business of every attorney and solicitor to use his influence with his friends in the House. The Incorporated and other Law Societies have afforded an opportunity to bring the question fairly and favourably before parliament; but its success must depend upon the exertions to be used, not by themselves alone, but by their brethren in general. Some other Petitions have been presented since our last List in support of the measure; but the great bulk of the petitions will be reserved for the day on which the motion stands appointed.

The petitions from the country should be forwarded for presentation to the individual members of the respective districts.

CIRCUITS OF THE JUDGES.

The Judges met in the Exchequer Chamber on Thursday morning, and selected their Circuits as follows:—

NORFOLK.—Lord Chief Justice *Wilde*, and Mr. Justice *Coltman*.

HOME.—Lord Chief Baron *Pollock*, and Mr. Baron *Alderson*.

MIDLAND.—Mr. Baron *Parke*, and Mr. Justice *Coleridge*.

OXFORD.—Mr. Baron *Rolfe*, and Mr. Justice *Erie*.

NORTHERN.—Mr. Justice *Patteson*, and Mr. Justice *Wightman*.

WESTERN.—Mr. Justice *Cresswell*, and Mr. Justice *Williams*.

NORTH WALES.—Mr. Justice *Maule*.

SOUTH WALES.—Mr. Baron *Platt*.

Lord C. J. *Denman*, remains in Town and attends at Chambers.

NOTES OF THE WEEK.

EXCHEQUER CHAMBER.

The Judges will sit to hear appeals in the Court of Exchequer Chamber on the following days, from the several Courts:—

From the Queen's Bench on the 13th, 14th, and 15th June.

From the Common Pleas on the 16th June.

From the Court of Exchequer on the 18th and 19th June.

BUSINESS OF THE COURT OF QUEEN'S BENCH.

On Wednesday, Lord Denman gave notice, that on Saturday, June 2, the Court would proceed with the *new trial* paper and on Tuesday, June 5, (and not on Saturday,) would take the list of cases selected from the *Crown Paper*.

DOWNING PROFESSORSHIP OF CAMBRIDGE.

Andrew Amos, Esq., M.A., formerly Fellow of Trinity College, has been unanimously elected to this professorship, vacant by the death of Mr. Starkie, Q.C. The electors were the Archbishops of Canterbury and York, and the Masters of St. John's, Clare Hall, and Downing. Mr. Amos was called to the Bar by the Hon. Society of Lincoln's Inn, on Nov. 24, 1818, and was for five years one of the four members of the Supreme Court of India. Since his return from India, he has been a member of the Criminal Law Amendment Commission, and Professor of the Law Faculty at University College, London. He was appointed Judge of the County Court for the districts of Brentford, Brompton, and Marylebone, under the recent act, and may of course still hold that office, notwithstanding his new promotion.

THE LORD CHANCELLOR'S ILLNESS.

We regret to learn that the Lord Chancellor's serious illness continues, and that it is not probable his lordship will be able to resume his important duties during the present Term.

RECENT DECISIONS IN THE SUPERIOR COURTS:

AND SHORT NOTES OF CASES.

Rolls' Court.

Attorney-General v. Corporation of London.
May 5, 1849.

ATTORNEY-GENERAL'S COSTS.

In a suit instituted for the benefit of the public by the Attorney-General, the defendants excepted to the Master's report that their answer was insufficient, but the exceptions were overruled: Held that the costs occasioned by such proceedings ought to be paid to the Attorney-General—no objection having been made at the hearing.

This was an application on behalf of the defendants so to vary the order made in this cause as to give no costs against them. The

case first came on upon demurrer to the information, which was overruled without costs, and upon appeal to the House of Lords, that overruling was confirmed, and with the consent of the Attorney-General also without costs. The defendants then answered, and exceptions were taken to the answer for insufficiency, which were allowed by the Master, whereupon the corporation took exceptions to the Master's report.

Randall, in support of the application, contended that "the king or queen regnant, and any person suing to his or her use, shall neither pay nor receive costs, 24 Hen. 8, c. 8," 3 Stephen's New Commentaries, p. 617, and that this rule had been always followed except

in cases where the parties opposed to the Crown were guilty of gross misconduct or breach of faith.

The *Solicitor-General*, *Turner*, and *Maule*, contra.

The *Master of the Rolls*, after referring to the several proceedings in the case, said, that nothing was mentioned about the costs at the hearing of the exceptions. The costs were not those of the cause but of a particular proceeding in which the corporation had failed. The *Master* had certified that the defendants ought to pay the costs of the exceptions to their answer, and they had, upon exceptions to the report, paid the usual deposit to satisfy any further costs, and had made no application to be relieved from the costs. The practice of the Court had thus been acquiesced in, and no exemption from costs claimed. It by no means followed, because there was a rigid rule at law with respect to costs, that that rule existed in equity. It was admitted that this suit was instituted, not for the benefit of the Crown, but for a public service. There was no reason why the defendants, having adopted a course of proceeding which occasioned expense, should be exempt from the payment of that proceeding in accordance with the usual practice of the Court. The corporation must, therefore, pay the costs of the exceptions. The *Solicitor-General* having waived pressing for the costs of this application, none would be given against the defendants.

May 22.—*Oldfield v. Cobbett*—Stand over.

— 23.—*Grand Junction Canal Company v. Dimes*—Motion for discharge of order refused with costs.

— 23, 24.—*Robertson v. Skelton*—*Cur. ad. vult.*

— 24.—*Stephens v. Lord Newborough*—Reference to the *Master* as to sale of policy of assurance.

— 24.—*Dugdale v. Dugdale*—*Cur. ad. vult.*

— 25.—*Morgan v. Morgan*—Exceptions to the *Master's* report allowed, petitioners to pay the costs.

— 25.—*Hope v. Hope*—Compromise on partition of jewels.

— 26.—*Holder v. Durbin*—*Cur. ad. vult.*

— 26.—*Kendall v. Weymouth*—Stand over.

— 28.—*Shuff v. Holdaway*—Stand over to June 2.

— 29.—*Sturge v. Sturge and others*—Part heard.

— 29.—*Brookes v. Grenfell and others*—Injunction against selling mortgaged property refused, with costs.

Vice-Chancellor of England.

Eade v. Rowett. April 24, 1849.

SALE OF SHIP.—CERTIFICATE OF REGISTRATION.

Where a bill of sale of a ship was signed by the vendor, Held, in the absence of evidence to the contrary, to be sufficient proof that the purchase money had been paid, and the

certificate of registration ordered to be delivered up to the assignee of the purchaser.

A VESSEL on a voyage to Baltimore was sold to Messrs. Seymour and Christie for 2,350*l.* and the bill of sale was signed by the vendor at the time of the purchase. Mr. Christie afterwards sold his moiety to the plaintiff, in consideration of 1,000*l.* The captain having refused to deliver up the vessel on her return from the voyage to the plaintiff, and the defendant having also refused to part with the certificate of registration on the ground that the purchase money had not been paid, the plaintiff filed this bill to compel the defendant to deliver up the certificate. It was contended on his behalf that he was entitled to retain it as a lien upon the ship for the purchase money.

Faber for the plaintiff; *Glasse* for the defendant.

The *Vice-Chancellor* held, that as the defendant had signed the bill of sale to Seymour and Christie, it was sufficient evidence that the purchase money had been paid, in the absence of any proof by the defendant that it had not been paid. The plaintiff, therefore, was entitled to have the certificate of registration delivered up.

May 22.—*Roberts v. Roberts*—New trial as to the next of kin to an intestate, refused with costs.

— 23.—*Katsch v. Schenk*—Stand over.

— 23.—*Shersby v. South-Eastern Railway Company*—Leave granted to give short notice of motion for injunction.

— 24, 25.—*Attorney-General v. Guardians of the Parish of Northampton*—Motion to dissolve injunction restraining the payment of costs, incurred by soliciting an act for imposing certain poor-rates and which did not pass, out of the poor-rates, refused with costs.

— 25, 26.—*Shersby v. South-Eastern Railway*—Injunction refused to restrain railway company from running ballast waggons on a temporary tram-road close to plaintiff's houses—costs reserved.

— 26.—*Gennys v. Radcliffe*—Injunction refused, with costs, to restrain clerk of turnpike trust from keeping and using the plaintiff's land.

— 28.—*In re India and Australia Mail Steam-packet Company*—*Ex parte* injunction to restrain the creditors from proceeding in the Lord Mayor's Court, dissolved with costs.

— 29.—*Esparie Chetwood*—Order for payment of costs to petitioners.

— 29.—*Vulliamy v. Vulliamy*—Exceptions as to the frame of an inquiry before the *Master* respecting certain business accounts, overruled with costs.

Vice-Chancellor Knight Bruce.

Harmer v. Gooding. April 30, 1849.

BUILDING SOCIETIES.—PARTIES.

Demurrer for want of parties allowed to a bill filed by the plaintiffs on behalf of themselves and all other members of a Benefit Building Society, except the defendants,

who were directors, trustees, and treasurer of the same, on the ground that neither the plaintiffs nor the defendants represented the shareholders who had not given notice of their intention to retire from the society.

THIS bill was filed by the plaintiffs and all other members of the Hackney Benefit Building Society, except the defendants, who were the directors, treasurer, and trustees of the society. The bill prayed for an account of all the transactions between the society and the defendants, and of the sums received by them, or lost by their wilful default, and that they might be declared liable to make good such losses. It also prayed for a receiver, and that the property of the society might be applied in discharge of the liabilities. It was alleged that the number of members was about 200, and that those who had not, according to the rules of the society, given notice of their intention to withdraw were too numerous to admit of their being made parties, and that they were sufficiently represented by the defendants or the plaintiffs. The defendants demurred for want of equity and for want of parties.

Swanston and Beeson, in support of the demurrer, cited *Richardson v. Larpent*, 2 Y. & C., C. C., 507; *Evans v. Stokes*, 1 Keen, 24; *Crisp v. Bunbury*, 8 Bing. 394; *Re v. Mil-denhall Savings' Bank*, 6 A. & E. 952; *Deeks v. Stanhope*, 14 Sim. 57; and *Mozley v. Alston*, 1 Phill. 790.

Bacon and Southgate, contra, cited *Apperly v. Page*, 1 Phill. 779; *Cooper v. Webb*, 15 Sim. 454; 33 L. O. 376; *Cutbill v. Kingdom*, 1 Exch. R. 494; *Walkworth v. Holt*, 4 M. & C. 619.

The Vice-Chancellor said, that without deciding whether the bill was not demurrable for want of equity, nor whether, as it was so framed, every shareholder was not a necessary party, still the bill was defective for want of parties. Neither the plaintiffs nor the defendants, who were all directors, effectually represented the shareholders who had not given notice of retiring. The bill did not either allege that the names of these shareholders were unknown to the plaintiffs. The demurrer must, therefore, be allowed, with leave to amend, and costs reserved.

May 22.—*Prince Albert v. Strange, Attorney-General v. Strange*—Cause to be put in paper of June 1.

—22.—*Hamilton v. Bankin*—Trial of action to recover amount of award to proceed—Execution to be stayed for 10 days after judgment.

—23.—*Ex parte Sykes, in re Clarke*—Petition dismissed, with costs.

—23.—*Ex parte Newton, in re Newton, Moss, respondent*—Order for costs by consent—Fiat to be annulled and estate conveyed.

—24.—*Rudd v. Speare*—Stand over.

—25.—*In re the Direct London and Manchester Railway Company, ex parte Peacock*—Stand over, the directors undertaking to produce the accounts.

—25.—*In re the Direct London and Exeter*

Railway Company—Order for reference to wind up company.

—25.—*In re the Wisbeach, Peterborough, and Midland Union Railway Company*—The like.

—25.—*In re the Ipswich, Norwich, and Yarmouth Railway Company*—The like.

—26.—*In re the Eastern Counties Extension Railway Company*—The like.

—25.—*In re the Cambridge and Colchester Railway Company*—The like.

—25.—*In re the Northampton, Lincoln, and Hull Railway Company*—The like.

—25.—*In re the Waterford and Kilkenny Railway Company*—The like.

—26.—*In re the Rugby, Warwick, and Worcester Railway Company*—The like.

—26.—*In re the Warwick and Worcester Railway Company*—The like.

—26.—*In re the London and Birmingham Extension Railway Company*—The like.

—26.—*Coombes v. Brookes*—Order for payment of money out of Court to petitioner on undertaking to apply it in the trial of the issues, and to abide by any order of the Court as to its replacement.

—23, 26, 28.—*Ex parte Partridge, in re Cross, Smith and another, respondents*—Stand over.

—28, 29.—*Wrigley v. Swainson*—Petition dismissed with costs.

—29.—*Stanley v. Plevins*—Order for writ of *ne exeat* *regno* dismissed with costs—Reference to the Master as to amount of damages sustained by the issuing thereof, and imprisonment thereunder.

—29.—*Naden v. London and North-western Railway Company*—Stand over.

—29.—*In re Bridgwater and Minehead Junction Railway Company*—Stand over.

Vice-Chancellor Wigram.

Hutton and another v. London and South-western Railway Company. April 18, 28, 1849.

RAILWAY CLAUSES' CONSOLIDATION ACT.—CONSTRUCTION.

Where a railway had, by widening a bridge on their own land, injuriously affected property, Held, that the doctrine in Lister v. Lobley, 7 A. & E. 124, applied, and that compensation need not be made before doing the act complained of, as it might be impossible to ascertain the damage consequential on the same.

THE plaintiffs were lessees for years, and occupiers of a water corn-mill, worked by a stream and reservoir maintained by the tidal waters of the Thames, near Nine Elms. The defendants, by an agreement bearing date August, 1837, purchased a portion of the land forming the reservoir, and the right of erecting a bridge over the stream, for 950l. The price included the lease of the land and water, and the increased expense of clearing periodically the stream, the general injury by severance, and other consequential damage. The agreement was carried into effect, and the railway

bridge erected. The company obtained in 1847 a further act, to enable them to widen certain parts of the railway, including that part at which the bridge had been erected over the plaintiffs' reservoirs. They accordingly commenced to widen the bridge, but without previously ascertaining the amount of damage the plaintiffs might sustain, or tendering compensation for the same. Whereupon the plaintiffs filed this bill for an injunction to restrain any proceedings that might affect the stream until compensation had been made. The defendants asked time to meet the motion, and then before it came on for hearing, summoned a jury to assess the damages, which were accordingly estimated at 200*l.*, and paid by the company to the plaintiffs. The answer was then filed, and the only question remaining was as to costs.

By the 8 Vict. c. 18, (The Lands' Clauses' Consolidation Act,) s. 84, it is enacted that "the promoters of the undertaking shall not, except by consent of the owners and occupiers, enter upon any lands which shall be required to be purchased or permanently used for the purposes, and under the powers of this or the special act, until they shall either have paid to every party having any interest in such lands, or deposited in the bank, in the manner herein mentioned, the purchase-money or compensation agreed or awarded to be paid to such parties respectively for their respective interests therein." The 8 Vict. c. 20, s. 6, (the Railway Clauses' Consolidation Act,) enacts, that "the company shall make to the owners and occupiers of, and all other parties interested in, any lands taken or used for the purposes of the railway, or injuriously affected by the construction thereof, full compensation for the value of the lands so taken or used, and for all damage sustained by such owners," &c., "the amount of such compensation shall be ascertained and determined in the manner provided by the said Lands' Clauses' Consolidation Act," &c.

The Solicitor-General and J. H. Law for the plaintiffs; Wood and Wickens for the defendants.

The Vice-Chancellor said, the work proposed to be done by the company was confined to the widening of the bridge, and everything had been done on the land purchased and paid for by the company, under the agreement of 1847. They had not therefore entered upon the land of a stranger, and taken the land before it was paid for, but had done works upon lands already purchased and paid for, which might injuriously affect the mill and reservoir. The case came rather under the 8 Vict. c. 20, and as that act did not specify whether the prospective damage was to be ascertained before the commencement of the works, the case of *Lister v. Lobbey*, 7 A. & E. 124, was an authority. In that case it was held that a company might do acts under their act, though injurious to others, before making compensation. It was impracticable in many cases to know whether any damage would be sustained, or what was its extent. The acts done by the company at the filing of

the bill were not in themselves unlawful, and there was no ground for the notice required by the act of parliament. Nor was the case altered by the proviso in the agreement of 1837, as the right of widening the bridge was acquired from the act of 1847. The plaintiffs were entitled to compensation for damages consequential on the commencement of the works, to be estimated on the basis that the company were owners in possession of the land purchased in 1837. The bill must therefore be dismissed with costs, the order to be drawn up so as to allow the parties to appeal.

May 22.—*Douglas v. Willes*—Judgment upon construction of settlement.

—22.—*O'Reilly v. Alderson*—Cur. ad. vult.]

—23.—*McCalmont v. Rankin*—Stand over, with leave to file supplemental bill.

—25.—*O'Reilly v. Alderson*—Stand over.

—22, 23, 24, 25, 26.—*Reynell v. Sprye, Sprye v. Reynell*—Cur. ad. vult.

—26.—*In re Cutler's and Redmayne's Charities*—Order to enable the trustees to increase the amount of apprentice-fees from 5*l.* to not more than 15*l.*

—26.—*Attorney-General v. Corbyn*—Order for sale of stock of charity to pay legacy duties, costs of petition and transfer.

—28, 29.—*Marshall v. Sladden*—Part heard.

Queen's Bench.

(Before the Four Judges.)

Fuller v. Patrick. April 18, 30, 1849.

CONTRACT.—BUILDING OF HUSTINGS.—RETURN OF TIMBER.

The plaintiff agreed to build hustings at a certain price "taking the wood back," but the timber was carried off by the fishermen in accordance to an alleged custom: Held, in an action to recover damages for the non-return of timber, that the plaintiff was entitled to a verdict.

THIS was an action to recover damages against the Mayor of Harwich for neglecting to return the wood-work of the hustings at the last borough election within a reasonable time. It appeared that on the conclusion of the election, the fishermen of Harwich seized upon, and carried away, the timber, according to a custom which is said to have prevailed in the borough. An agreement was put in evidence on the part of the plaintiff, by which he agreed to take the hustings for the election as before, with alterations, at 19*l.* 10*s.*, by taking the wood back. Mr. Justice Wightman, who presided at the trial at the last Essex Assizes, held that the defendant was bound to return the wood-work, which had not been done. A verdict was therefore found for the plaintiff. An application was made to set aside the verdict and to enter a nonsuit and for a new trial, on the ground of the improper admission and rejection of evidence.

Shee, S. L., and Hawkins, in support of the motion.

The Court held, that the defendant ought to have prevented the fishermen from carrying away the wood, whereby the plaintiff had been unable to have the timber. The verdict, therefore, was rightly given for the plaintiff, and the rule must be refused.

May 22.—*Cobbett v. Hudson*—Prisoner remanded.

— 22.—*Ford v. Hudson*—Motion to discharge prisoner refused.

— 22.—*Day v. Paupierre*—*Cur. ad. vult.*

— 22.—*Freeman v. Rosher*—Judgment for the defendant.

— 23.—*Regina v. Kendall and others*—Rule nisi for new trial.

— 23.—*Regina v. Burrough and others, in re the Orton Vicarage*—Rule nisi for mandamus to present to a vicarage.

— 23.—*Forth v. Simpson*—Rule absolute to enter verdict for defendant.

— 24.—*Regina v. Newton*—Rule nisi for habeas corpus discharged.

— 25.—*Baum v. Ricketts and others*—*Cur. ad. vult.*

— 26.—*Regina v. Baptist Missionary Society*—*Cur. ad. vult.*

— 28.—*Regina v. Corporation of Lichfield, ex parte Simpson*—Rule nisi for mandamus to the mayor, &c., to execute a bond to secure payment to the town clerk of compensation for the loss of office.

— 28.—*Bailey v. Macauley*—*Cur. ad. vult.*

— 29.—*Bailey v. Haines*—*Cur. ad. vult.*

— 29.—*Bailey v. Bracebridge*—*Cur. ad. vult.*

Queen's Bench Practice Court.

(*Coram Coleridge, J.*)

Regina v. Buck, ex parte Charnly. May 7, 1849.

OFFICE OF HIGH BAILIFF OF COUNTY COURT.—QUO WARRANTO.

Rule nisi for quo warranto to high bailiff of a County Court, which was substituted for one held under the 4 & 5 Vict. c. 67, and was mentioned in schedule B. to section 34 of the County Courts' Act, as one to which the former bailiff was to be appointed.

THIS was an information by way of quo warranto to the defendant, who was high bailiff of the Blackburn County Court, to show cause by what authority he exercised that office. The Blackburn County Court was established under the 4 & 5 Vict. c. 67 in 1841, and the judge appointed, as bailiff, the informant Charnly, who acted from that year up to 1846, when the Court held under the 9 & 10 Vict. c. 95, was constituted, and the 4 & 5 Vict. c. 67 was repealed. By the 34th section of the 9 & 10 Vict. c. 95, it is enacted, that "clerks and bailiffs holding office in any Court holden under any act cited in Schedule (A.) and (B.), [in which the Blackburn County Court was specified] on the 1st June in this year, and continuing to hold the same, at the time when such act is repealed, whether qualified or not as hereinbefore provided, shall be entitled, if

not disqualified under this act, to be the first clerks and high bailiffs of the same Court, when holden as a County Court under this act, and shall continue to execute their several offices, subject to the power of removal in this act," &c. The informant accordingly applied to be appointed, but was refused by the judge, who appointed the defendant to the same.

Petersdorff, in support of the application, contended, that the informant was entitled to be appointed.

The Court granted a rule nisi for the quo warranto.

May 26.—*Doe dem. Inman v. Roe*—Rule nisi for judgment against the casual ejector.

— 28.—*Doe dem.* — *v. Roe*—Rule for judgment against the casual ejector.

— 29.—*Ex parte Strand Mutual Assurance Company*—Rule nisi on attorney to register certain deeds.

Common Pleas.

Richards v. London, Brighton, and South Coast Railway Company. May 5, 7, 1849.

RAILWAY COMPANY.—LIABILITY AS CARRIERS.

Held, that a railway company is bound, not only to convey luggage entrusted to their care to the railway station, but to deliver the same at the usual place of delivery—the edge of the platform; and where a parcel was not so delivered, judgment for the plaintiff was maintained.

Semble, that placing a parcel openly in a railway carriage with a passenger, is sufficient to render the company liable as common carriers.

THIS action was brought to recover the value of a dressing-case containing valuable property, which had been placed in the railway carriage with the plaintiff's wife, and lost. The plaintiff's wife, on the 10th November, 1846, came in a fly from Bognor, Sussex, to the Woodgate railway station, and took a ticket for London, and the article in question was placed under the seat of the carriage in which she travelled, by the fly-man. On the arrival at London, one of the company's servants undertook to see about the luggage, which was, with the exception of the dressing-case, placed in a cab and conveyed to the plaintiff's residence. The trial took place at Guildhall before *Denman, L. C. J.*, and a verdict for 150*l.* was found for the plaintiff, leave being reserved to move to enter the verdict for the defendants, if the Court were of opinion that they were not liable under the circumstances as common carriers.

A rule nisi having been accordingly obtained, *Byles, S. L.*, and *Bovill* showed cause against the rule, and cited *Robinson v. Dummors*, 2 B. & P. 416; and *Story on Bailments*, 4th ed., sec. 538; *Talfourd, Q. S.*, and *Brumwell* in support of the rule.

The Court held, that as the duty of a com-

mon carrier was safely and securely to convey and deliver the goods taken as such carriers, it was immaterial to show negligence when the goods had not been so delivered. The contract was not only of conveying, but also of delivering according to the usual custom of railways, which was, on the other side of the platform. The parcel being put openly in the carriage was a sufficient placing the same in the company's custody, and as therefore they had not delivered it, their duty as common carriers had not been carried out, the verdict must be maintained and the rule discharged.

May 23.—*Lewis v. Campbell*—Cur. ad. vult.

— 23.—*Franklin v. McLeod*—Damages reduced by consent, and rule for new trial discharged.

— 24.—*Keighley v. Gardiner*—Rule nisi for review of taxation on the ground of disallowance of certain costs to which the plaintiff was entitled.

— 24, 25, 26.—*Walker v. Giles and another*—Cur. ad. vult.

— 28.—*Bayley v. Wilkins*—Rule discharged for nonsuit.

— 29.—*Somerville v. Hawkins*—Cur. ad. vult.

Exchequer.

Norris v. Teed. May 2, 1849.

LUNATIC.—RECAPTURE.—PLEADING.

Held, that a plea by the proprietor of a lunatic asylum setting out the order and medical certificates and recapture within 14 days after the escape of a lunatic, was a sufficient justification for such recapture and detention.

THIS was an action of trespass against the defendant, who was the proprietor of a lunatic asylum at Burgh Hall, Lancashire, for assaulting and falsely imprisoning the plaintiff's wife. It appeared that Elizabeth Drury, a lunatic, had escaped from the asylum, and that the defendant retook her within 14 days. The defendant pleaded not guilty, and also a justification under the 8 & 9 Vict. c. 100, s. 87, which enacts that, "in case of the removal of any patient or his escape, and recapture within the space of 14 days, the original order for his reception shall remain in force." To this the plaintiff specially demurred. By section 99 of the act it is provided, that "in every indictment or other proceedings against any proprietor or other person authorized by this or any of the repealed acts to take charge of any lunatic, the party complained of may plead the order and certificates in his defence, and the same shall be a bar of all proceedings against such person."

Cooking in support of the demurrer; *Watson and Henderson* contra.

The Court said, the act was a protection to proprietors of lunatic asylums in all proceedings against them for receiving and detaining patients. The proper remedy of the husband

was by *habeas corpus*, or by complaint before the Lunacy Commissioners, and he had no right to retake her himself after her escape. It was not intended that keepers of asylums should have the burthen of inquiring whether patients were unsound or not, and all that was necessary was the requisite order and certificates. The plea was therefore good, and the defendant entitled to judgment.

May 22.—*Fowler v. Goldney and others*—Rule nisi to quash certiorari or issue writ of *procedendo*.

— 22.—*Addington and others v. Coles, clerk*—Rule to draw up rule pursuant to indorsements on briefs, refused with costs.

— 22.—*Hawkins v. Harwood*—Stand over.

— 22.—*Brooke v. Roll*—Stand over.

— 22.—*Wareing v. Sellers*—Application to restore case to demurrer paper, refused.

— 23.—*Hassell v. Merchant Traders' Ship Loan Association*—Cur. ad. vult.

— 23.—*Partridge v. Gardner and others*—Cur. ad. vult.

— 24.—*Cherry v. Heming and another*—Rule nisi for new trial on the ground that the verdict was against evidence.

— 24.—*Whittaker v. Head*—Rule to set aside verdict and for new trial, refused.

— 25.—*Davey v. Burdin*—Rule refused to enter verdict for defendant, or to arrest judgment.

— 26.—*How v. Pyke*—Rule nisi to enter nonsuit and for new trial.

— 26.—*Aglionby v. Williams and others*—Rule absolute for new trial upon payment of costs, the verdict being against evidence.

— 26.—*Homersham v. Wolverhampton Waterworks Company*—Rule absolute to set aside nonsuit and for new trial, on the ground of misdirection.

— 26, 28.—*Bull, administrator, v. Rankin*—Rule absolute for new trial on payment of costs.

— 28.—*Leeds and Thirsk Railway Company v. Fearnley*—Judgment for plaintiffs on demurrer to plea of infancy.

— 28.—*Spooner v. Payne*—Judgment on case from V. C. Knight Bruce, that pension to bankrupt as Country Commissioner of Bankrupts passed to the official assignee, and did not fall within the 1 & 2 Vict. c. 110, s. 56.

— 29.—*Bere and another v. Moore*—Rule for new trial refused.

— 29.—*Wheeler v. Stiles and another*—Rule absolute to enter verdict for the plaintiff for 3l. 3s.

— 29.—*Manning v. Wilkin*—Rule nisi to set aside verdict, discharged.

Court of Exchequer Chamber.

May 29.—*Lorant v. Scadding*—Judgment of the Court of Queen's Bench, as to validity of rate reversed.

— 29.—*Harmer and others v. Steele*—Judgment of the Court of Exchequer reversed.

— 29.—*Moulton and wife v. Camroux*—Judgment of the Court of Exchequer, that the action was not maintainable, affirmed.

ANALYTICAL DIGEST OF CASES REPORTED IN ALL THE COURTS.

Privy Council Appeals.

ACTION OF ACCOUNT.

A. being the clerk and manager of *B.*, the Sheriff of Montreal, received and paid in that capacity various sums of money on *B.*'s account, in the course of the business of the office. *B.* brought an action against the representatives of *A.*, for an account of the receipts, and application of the monies, which passed through *A.*'s hands, while in *B.*'s office: *Held*, in such circumstances, by the Judicial Committee, reversing the judgment of the Court of Appeals of Lower Canada, that such action would not lie against *A.*'s representatives. *Brmatinger v. Gagy*, 5 Moore, 1.

See *Equitable Assignment*.

AGREEMENT FOR LEASE.

Specific performance.—Agreement for a lease for five years, from the 1st of April, 1840, the landlord undertaking to erect, by that time, a new warehouse, on part of the ground to be demised, and to put the old warehouse in repair, the amount of rent to be determined with reference to the amount of the landlord's expenditure on the buildings. The new building was not erected, nor the old warehouse repaired, on the 1st of April, but no objection was made by the intended lessees, who then occupied part of the premises under a former agreement, and shortly afterwards the whole premises were destroyed by fire. In such circumstances, *held*, upon a bill filed by the landlord, for specific performance of the agreement, and for the defendants, to rebuild the premises, and to accept the lease; that it was a condition precedent, that the premises should be put in repair before the lease was granted, and that, as the landlord had not performed his engagement within the time limited, the contract could not be enforced in equity, and the bill dismissed. *Counter v. Macpherson*, 5 Moore, 83.

ALIENS.

Powers of Governor of Guernsey—Deportation—Baillif and jurats—Pardon under sign manual.—The advice of the baillif and jurats of the Royal Court in the island of Guernsey, is not necessary, for the purpose of authorizing the Governor, or Lieutenant-Governor, to exercise the power of deportation of aliens domiciled in the island.

The baillif and jurats are individually entitled to take part, and speak, in all conferences with the Governor or Lieutenant-Governor of the Island, but the Governor, or Lieutenant-Governor, has the sole authority to appoint the time and place for such conference.

A writ of pardon, under her Majesty's sign manual, addressed to the Lieutenant-Governor and the keeper of the gaol, to discharge out of custody a person undergoing imprisonment, does not require to be verified and registered by the Royal Court, before it is executed. The refusal of the gaoler to discharge a prisoner, on the production of a writ of pardon under the sign manual, will not warrant the

Lieutenant-Governor in enforcing obedience to the writ, by the threat of military or other force. *In re the baillif and jurats of the Royal Court of Guernsey*, 5 Moore, 49.

ASSIGNMENT OF JUDGES' EMOLUMENTS.

Puisne judge at Madras—Public policy.—An assignment, by a Puisne Judge of the Supreme Court at Madras, of the sum "equal to the amount of six months' salary," directed by the 6 Geo. 4, c. 85, to be paid to the "legal personal representatives" of such judge, in case he shall die, in and after six months' possession of office, is a valid assignment, being a vested contingent interest in such judge: and not being payable during the lifetime of the judge, is not an assignment of salary, within the 5 & 6 Edw. 6, c. 16, and 49 Geo. 3, c. 126, and, therefore, contrary to public policy. *Arbuthnot v. Norton*, 5 Moore, 219.

ATTORNEY.

Professional confidence.—An attorney, who prepared a testamentary paper at the instance of the party benefited by it, is not privileged, on the ground of professional confidence, to withhold from the Court facts relating to contemporaneous facts, upon which he founded his opinion of the testamentary capacity of the party making the will. *Jones v. Godrich*, 5 Moore, 17.

BAILEE.

See *Negligence of Bailee*.

BOMBAY CHARTER.

1. *Appeal in criminal cases—Prerogative of the Crown*.—The Bombay Charter of the 8th December, 1823, (granted in pursuance of the powers conferred to the Crown, by 4 Geo. 4, c. 71,) after providing "That in all indictments, informations, and criminal suits and causes whatsoever, the said Supreme Court of Judicature at Bombay shall have the full and absolute power and authority to allow or deny the appeal of the party pretending to be aggrieved," proceeds thus—"And we do hereby also reserve to ourself, our heirs, and successors, in our or their Privy Council, full power and authority, upon the humble petition of any person or persons aggrieved by a judgment or determination of the Supreme Court of Judicature at Bombay, to refuse or admit his, her, or their appeal thereupon, upon such terms and under such limitations, restrictions, and regulations, as we or they shall think fit, and to reform, correct or vary, such judgment or determination as to us or them shall seem meet."

Upon a petition, praying for leave to appeal from a conviction for felony; *held* by the Judicial Committee of the Privy Council, that there was no power reserved to the Crown by the charter, to allow appeals in criminal cases, such appeals being confined to civil cases only.

Held also, that the charter having been granted by the Crown by force of an act of parliament, must be construed with reference to the powers conferred by the act, even though

the prerogative of the Crown were limited by such construction; and that the Supreme Court alone has full and absolute power to allow or deny permission to appeal in criminal cases. *Regina v. Eduljee Byramjee*, 5 Moore, 276.

Case cited in the judgment: *Cuvillier v. Aylwin*, 2 Knapp, F. C. 72.

2. *Appeal in criminal cases.*—Under the Bombay Charter of Justice, the Supreme Court at Bombay is invested with full and absolute power to allow or deny an appeal in criminal cases, and no power is reserved to the Crown, by such charter, to grant leave to appeal in such cases.

The case of *Christian v. Correa*, 1 P. Wms. 339, observed upon. *Regina v. Alloo Paroo*, 5 Moore, 296.

Case cited in the judgment: *Ash v. Rogle*, 1 Vera. 367.

CLERGY.

Form of suit for penalties for non-residence.—The proceeding under the stat. 1 & 2 Vict. c. 106, s. 32, against a beneficed clergyman for penalties, for non-residence on his residence, without licence or exemption, is in the nature of a civil, and not a criminal, proceeding.

In condemning the defendant for non-residence, in the penalty of one-third of the annual value of his benefice, the Court below did not decree a specific sum, but referred the matter to the Registrar of the Court to ascertain the same: *Held*, on appeal, that such course was regular.

It is not necessary for the promoter of such a suit, to allege or prove that the defendant had not a licence, or was not resident on another benefice: those facts, being within the defendant's own knowledge, are capable of being alleged and proved by him in defence. *Black v. Ruckham*, 5 Moore, 305.

COLONIAL JUDGMENTS.

See *Mortgage*.

CONTRACT.

Bought and sold notes.—C. and Co. and H. and Co. were merchants at Calcutta. H. and Co. sold to C. and Co. a large quantity of indigo, through the medium of a broker, who drew up a sold note addressed to H. and Co., and submitted it to H. for his approval, when H. having objected to a particular word remaining, the broker took the sold note to C., and informed him of H.'s objection. C. struck his pen through the word objected to by H., placing his initials over that erasure, and returned it to the broker, who thereupon delivered it, so altered, to H. and Co. The broker delivered to C. and Co., on the following day, a bought note, which differed in certain material terms from the sold note. In an action brought by H. and Co. against C. and Co. for non-performance of the contract contained in the sold note, the Supreme Court at Calcutta was of opinion, that the sold note alone formed the contract, and found for the plaintiffs. Upon appeal, *held*, by the Judicial

Committee, reversing such finding, that the transaction was one of bought and sold notes, and that the circumstances attending C.'s alteration of the sold note and affixing his initials, were not sufficient to make that note, alone, a binding contract; and that there being a material variation in the terms of the bought note with the sold note, they together did not constitute a binding contract. *Cowie v. Remfry*, 5 Moore, 232.

Cases cited in the judgment: *Rowe v. Osborne*, 1 Stark., N. P. 140; *Thornton v. Kempster*, 5 Taunt. 786.

CRIMINAL LAW.

Appeal from colonies.—*Semble*, no appeal lies, in cases of felony, to the Queen in Council, from any of the dominions of the Crown of Great Britain, which are governed by the law of England. *Regina v. Eduljee Byramjee*, 5 Moore, 277.

And see *Bombay Charter*.

DIVORCE.

Adultery, single witness, with corroborative circumstances.—In a suit for a divorce, *a mensd et thoro*, a decree of confrontation was issued, for the wife, who had eloped to America, to appear to be identified, when her proctor tendered a defensive allegation. The Archdeacon of Canterbury rejected the allegation, as she was in contempt, by reason of her non-appearance to the decree of confrontation. Such rejection affirmed, on appeal, by the Judicial Committee of the Privy Council.

A divorce *a mensd et thoro*, on the ground of adultery, pronounced for, upon the evidence of a single witness, as to the cohabitation of the wife, after her elopement, there being corroborative circumstances. *Curtis v. Curtis*, 5 Moore, 252.

DOMICILE.

Prescription—*St. Lucia*—Domicile must be *de facto*, not *de jure*. Therefore the fact of a party resident in France, but represented by an attorney in the Island of St. Lucia, will not create a constructive domicile, so as to entitle a party to set up as a discharge to a mortgage, a plea of prescription of 10 years *entre présents*. *Beauvais v. Muter*, 5 Moore, 69.

EQUITABLE ASSIGNMENT.

Account.—F., and three others, *W. D., F. D., and J. D.*, purchased from J. a herd of cattle, in the following shares: F. one-third, *W. D., F. D., and J. D.*, two-thirds between them. At the time of the purchase, F. and *W. D.* wrote a letter to *W. & Co.*, which, after stating the purchase, and that they had given their promissory notes for the purchase money, at one and two years' date, proceeded thus:—“We request you to endorse these bills for the satisfaction of Mr. J., for which endorsement we will allow you the usual commission of 2l. 10s. per cent.; and will, for your security, place at your unreserved disposal, the whole of the herd in question, and its increase; trusting, however, that our recommendation of allowing such part of it to be disposed of, as will cover the amount of your endorsements, and confid-

ing to *J. D.*, acting under your instructions from us, to remit you all the proceeds as they arise, will meet with your satisfaction."

W. and *Co.* assented to this arrangement, endorsed the notes, and handed them over to *J.* At the same time *F.* and *W. D.* wrote a further letter to *W.* and *Co.*, as follows:—"In consequence of your complying with our request, to endorse our bills for the purchase of *J.*'s herd, we hereby make over the said herd to you, requesting you to give *J. D.* instructions how to dispose of the herd, and remit you the proceeds, until by such remittances your endorsement is covered."

W. and *Co.* in no way interfered with the sale of the cattle, nor was any part of the proceeds of the sale ever handed to them, and the herd was lost. Upon a bill filed by *F.* against *W.* and *Co.*, seeking to make them liable, as trustees, for the loss: *Held*, by the Judicial Committee, affirming the decree of the Supreme Court of New South Wales, that, under the above agreement, *W.* and *Co.* could not be considered as having been in possession of the cattle, as mortgagees, or as equitable assignees, and that the letter operated only as a collateral security, and that they were not liable in equity to account for the loss.

The bill, besides seeking to make the defendants liable to account for a particular transaction, prayed for a general account. No account, however, was asked for in the Court below. Upon the Judicial Committee affirming the decree of the Court below, deciding against the liability of the defendants as to the particular transaction, they refused to decree a general account, as it had not been asked for at the hearing in the Courts below. *Flint v. Walker*, 5 Moore, 179.

GUERNSEY.

See *Aliens*.

GUIANA.

See *Les Anastasiana*.

HIGHWAY RATE.

Measure of rateable value of premises.—By statute 33 Geo. 3, c. 52, s. 158, (for, among other things, making better provisions for the good order and government of the towns of Calcutta, Madras, and Bombay,) assessments are directed to be made on the owners or occupiers of houses, buildings and grounds, "according to the true and real annual values thereof."

Upon a rate made in pursuance of this statute, the Quarter Sessions at Bombay assessed the annual value of a cotton pressing factory, having fixed machinery, upon the gross receipts, after making an allowance of 10 per cent. for tenants' profits: *Held*, by the Judicial Committee, reversing the order of confirmation of sessions by the Supreme Court, and quashing the rate, that the principle of the assessment was erroneous, the proper measure of rateable value of the building being the rent (subject to the deductions required by the statute 6 & 7 Wm. 4, c. 96,) that the building might reasonably be expected to be let for, to

a yearly tenant. *Fawcett v. Justices of Bombay*, 5 Moore, 143.

Case cited in the judgment: *Reg. v. Grand Junction Railway*, 4 Q. B. 18.

INDIAN WILL ACT.

Execution.—The seventh section of the Indian Will Act, No. 25, of 1839, enacts, "that no will shall be valid unless it shall be in writing, and enacted in manner hereinafter mentioned, (that is to say,) it shall be signed at the foot or end thereof by the testator, or by some other person in his presence, and by his direction, and such signature shall be made or acknowledged by the testator, in the presence of two or more witnesses, present at the same time; and such witnesses shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary."

A testator signed his will, in the presence of a witness, who subscribed it in his presence; and some time afterwards, upon the arrival of another witness, the testator, in the joint presence of the former witness, and the other subscribing witness, acknowledged his subscription, but did not re-subscribe.

Held, by the Judicial Committee (affirming the sentence of the Supreme Court at Calcutta), that the requirements of the act had not been sufficiently complied with; it being necessary that both witnesses should be jointly present at the same act of the testator, and jointly subscribe it in his presence. *Casement v. Fulton*, 5 Moore, 130.

Cases cited in the judgment: *Grayson v. Atkinson*, 2 Ves. sen. 454; *Ellis v. Smith*, 1 Ves. jun. 11.

JERSEY PETITION OF APPEAL.

Parties.—The Royal Court of Jersey having, on the remission of a *doleance* and petition, pronounced certain arrests and seizures made by the Attorney-General of the island, for alleged frauds against the Revenue Laws of the island, to have been illegal; the original petitioner brought a petition and remonstrance in the Royal Court of Jersey, against the Attorney-General, for damages thereby occasioned. The Attorney-General, upon being called upon to answer this remonstrance, summoned the Lieutenant-Governor, the Bailiff and Jurats, (who were the Commissioners of the Impôt Duties,) alleging that, as he had acted under their advice, they were proper parties to the suit, and they were joined with him as parties to the suit. The bailiff and jurats constituted the Royal Court. The Attorney-General then put in a plea, that the Court, thus constituted, was incompetent, as being interested in, and parties to, the suit, whereupon the Court declared itself incompetent to adjudicate in the cause. The petitioner took no further steps for two years, when he presented a *doleance* and petition to the Queen in Council, and obtained a summons for the Attorney-General to appear. The Attorney-General petitioned to dismiss such summons, —1st, because no leave to appeal had been granted by the Court below; 2ndly, because the other parties to the suit ought to have been summoned; and 3rdly, because if it was an

appeal, it had not been duly prosecuted within three months from the date of the act of the Court: *Held*, by the Judicial Committee, that such objections were fatal, and the summons discharged. *In re Whitfield*, 5 Moore, 157.

Case cited in the judgment: *In re the Assignees of Manning*, 3 Moore, P. C. 154.

LEASE.

See *Agreement for Lease*.

LEX ANASTASIANA.

Whether in force in British Guiana?—*Jus retractus*—*Holland currency*—*Interest*—*A.*, resident in Amsterdam, being the owner in possession of a plantation in British Guiana, by an instrument executed on her behalf, by her attorney in London, in the year 1817, sold the plantation, *cum annexis*, to *B.*, for 100,000 guilders, "Holland currency," and 30,000*l.* sterling, taking as part of the consideration money, a first mortgage on the plantation for the 100,000 guilders. By the terms of this mortgage, it was stipulated that the 100,000 guilders were not to be paid during the lifetime of *A.*; but upon her death, to her lawful descendants, (if she had any,) and if not, to the nephews and nieces of *J. B.*; and it was specially provided, that if at any time the interest, at the rate of 5 per cent., should not be punctually paid every year at Amsterdam, and that if, by such default, *A.* should be obliged to appoint an attorney to demand the same in the colony, the interest in that case should be at the rate of 6 per cent., and a further charge of 10 per cent. for commission. *A.* intermarried with *E.*, and the interest on the mortgage not having been paid as stipulated, an attorney was appointed at British Guiana, to recover the arrears. In 1828, *A.* died without issue or lawful descendants, leaving *E.*, her husband, surviving, at which time the interest on the mortgage was still in arrear. In the year 1836, *C. and Co.*, purchased the first mortgage, and all the interest therein, which the parties claiming title under the limitation in the mortgage deed to the nephews and nieces of *J. B.* had. The consideration money paid by *C. and Co.*, was considerably less than the amount of the first mortgage and interest thereon. Upon the passing of the act for the Abolition of Slavery, *C. and Co.* received from the Compensation Commissioners, in respect of this mortgage, a sum more than sufficient to repay them what they had paid for the mortgage, but much less than was due upon the mortgage for principal and interest. The plantation was sold in 1838, at the suit of *B.*, and all creditors having claims were summoned to render their claims, and upon *C. and Co.* claiming priority under the first mortgage, the Supreme Court of Demerara and Essequibo *held*, that the second mortgages was preferent over the first, as under the Anastasian law, which they declared prevailed in British Guiana, an assignee for a valuable consideration of a debt or chose in action, secured by debt, could not recover more than the amount of the consideration money actually paid to the assignor, with legal interest from the time of

payment, and that the sum received by *C. and Co.*, from the Compensation Commissioners, was more than sufficient to pay off, and must be held to extinguish the whole debt upon the first mortgage. Upon appeal, *held*, by the Judicial Committee of the Privy Council, reversing the decree—

1. That in the absence of any fraud by *C. and Co.*, in the purchase of the first mortgage, and of any authority to show that the *lex anastasiana* prevailed in British Guiana, or could be applied to a case so circumstanced, the amount of consideration money given by *C. and Co.*, was not to enter into question between them and the second mortgagee.

2. That the term in the mortgage deed, "Holland currency," coupled with the fact of Amsterdam being the place mentioned for payment, meant Dutch currency, and not colonial currency.

3. That the clause varying the interest from 5*l.* to 6*l.*, was not confined in its operation to the lifetime of *A.*; but that circumstances might have rendered it equitable to increase the rate of interest after *A.*'s death, or during some portion of the time, after that event. *Macrae v. Goodman*, 5 Moore, 315.

MADRAS.

See *Assignment of Judge's Emoluments*.

MALTA APPEALS.

Order in Council regulating appeals—*Appealable value*.—By the order in Council, of the 18th of Dec. 1834, for regulating appeals from the Island of Malta, to the King in Council, an appeal is allowed only where the sum, or matter at issue, involves directly or indirectly any civil rights, amounting to or of the value of 1000*l.* But leave to appeal was granted by the Judicial Committee, from the decrees of the Courts of the first and second instance of the island, which directed the children to be removed from the guardianship of their mother. *Camilleri v. Fleri*, 5 Moore, 161.

MATRIMONIAL SUITS.

See *Mauritius*.

MAURITIUS, CHARTER OF JUSTICE.

Appeal to Queen in Council in matrimonial suits.—The Charter of Justice of the island of the Mauritius does not provide for appeals in matrimonial suits, yet upon petition for that purpose, the judicial committee recommended the allowance of an appeal against a decree for the restitution of conjugal rights.

Semble, if an appeal is incompetent, the respondent should move on petition to dismiss the same on such ground, and not wait till the hearing, to object to its competency. *Shire v. Shire*, 5 Moore, 81.

Case cited in the judgment: *D'Orlinc v. D'Orlinc*, 4 Moore, P. G. 374.

MORTGAGE.

Registration of Colonial Judgment against the succession of debtor.—*General Hypothec*.—*Order in Council*.—*A.* obtained a judgment in the Court of the Seneschal, in the Island of St. Lucia, in 1827, on a mortgage claim against

the estate of B. After B.'s death, his heirs sold the estate to C. In 1830, the judgment against the estate was registered against B., and his successors, but not against C., who was then the owner of the estate. A. afterwards, by an act of session, transferred to D. a part of the mortgage claim. In an action "Declaration d'Hypothèque," brought by D., as the transferee of part of the mortgage claim against B., then in possession, it was held by the Judicial Committee of the Privy Council, affirming the judgment of the Court below :

1st, That the mortgage claim constituted, by the law of the island, a general hypothec, and created a real right upon the estate, and those who derived their title from B.'s heirs were subject to such hypothec.

2nd, That in such circumstances, the registration of the judgment of 1827, against B. and his successors, was a sufficient compliance with the Order in Council of 1829. *Beauch v. Muter*, 5 Moore, 69.

NEGLIGENCE OF BAILEE.

Special verdict of jury leaving facts to be inferred by the Court.—Though allowance is to be made for the technical difference of the proceedings in the Courts of Canada and those of England, yet where trial by jury prevails, a special verdict ought to be the finding of facts by the jury, from which the Court is to pronounce its judgment on the law, and the verdict ought not to leave facts to the Court to draw an inference; such as, whether negligence has or has not been established; negligence being a question of fact and not of law.

The negligence of a bailee in disobeying the instruction of a bailor, given more than a year prior to the cause of action, and not specifically declared upon: *Held*, not sufficient, though proved in the cause, to entitle the plaintiff to recover damages thereon. *A venire de novo* awarded, with liberty to amend the pleadings. *Tobin v. Murison*, 5 Moore, 110.

NEW SOUTH WALES.

Charter of justice—The charter of justice of New South Wales, of the 13th of Oct. 1823, (made in pursuance of the powers conferred by the 4 Geo. 4, c. 96,) gave a right of appeal, from the Court of Appeals in the colony, to the King in Council, where the subject at issue involved the sum of 2,000*l.* sterling. The 4 Geo. 4, c. 96, being about to expire, the 9 Geo. 4, c. 83, was passed, in which no provision was made for the continuance of the Court of Appeals; but power was given to his Majesty, by Charter, Orders in Council, or Letters Patent, to make rules for allowing appeals from the Supreme Court of the Colony. No new Charter, Order in Council, or Letters Patent, issued under this act. In such circumstances, the Judges in New South Wales held that they had no jurisdiction to allow an appeal from the Supreme Court to her Majesty in Council, the Judicial Committee, upon special petition, under their general jurisdiction, advising her Majesty to admit such appeal. *Flinn v. Walker*, 5 Moore, 180.

PATENT.

Prior user of Scotch patent in England.—*Confirmation under 5 & 6 W. 4, c. 83.*—The user of an invention in England, prior to the date of letters patent granted for Scotland, will invalidate the Scotch patent.

The Judicial Committee of the Privy Council, under the 5 & 6 W. 4, c. 83, s. 2, refused to confirm a Scotch patent, the invention being used in England before the date of the Scotch patent. *In re Robinson's Patent*, 5 Moore, 65.

PRE-EMPTION OF APPEAL.

Quære, whether the rules of the Ecclesiastical Courts in Doctors' Commons relating to the doctrine of pre-emption of appeal, apply to an Ecclesiastical cause in the Supreme Court at Calcutta, so as to deprive a party of the charter right to appeal within six months from the decree, &c. *Casement v. Fulton*, 5 Moore, 130.

PREROGATIVE OF THE CROWN.

Annexing conquered colony.—By the treaty of Paris, of the 10th Feb. 1763, the Island of Cape Breton, (which had been invaded and taken by the British forces,) was ceded by France to the King and Crown of Great Britain. By a proclamation, issued by the King in Oct. 1763, the Islands of Cape Breton and St. John's were annexed to the government of Nova Scotia, and the proclamation authorised the Governor to call General Assemblies, in the said governments respectively, as soon as the circumstances of the colonies would admit. In the year 1784, the Crown, by a commission to the Governor-in-Chief of Nova Scotia, and the islands of St. John's and Cape Breton, granted a constitution to the Island of Cape Breton, to consist of a Lieutenant-Governor, Council, and Assembly, distinct from that of Nova Scotia. The government of the island continued, however, to be regulated by a Lieutenant-Governor and Council, but no General Assembly was convened, or directed by the Commission of 1784. In the year 1820, the Crown, in the commission to the Governor-in-Chief of Nova Scotia, annexed Cape Breton to Nova Scotia. The inhabitants of Cape Breton petitioned the Crown, complaining of the illegality of the re-annexation by the act of the Crown alone, without their consent, or by an act of the Imperial Parliament, as contrary to the proclamation of 1763, and the commission of 1784: *Held*, by the Judicial Committee of the Privy Council, that such re-annexation was legal, and that the petitioners were not entitled to a separate constitution under the Commission of 1784. *In re the Island of Cape Breton*, 5 Moore, 259.

PRESCRIPTION.

See *Domicile*.

PROFESSIONAL CONFIDENCE.

See *Attorney*.

REVIVOR.

Appeal abated by the death of the respondent, whose heirs renounced the succession, and

a curator having been appointed by the Court below to the vacant succession, the appeal was revived against such curator. *Ernstinger v. Gagg*, 5 Moore, 1.

SAINT LUCIA.

See *Domicile*.

SCOTCH SEQUESTRATION.

Extending to the colonies.—*Interpleading Act, Tobago Local Act.*—The Scotch Sequestration Act, 2 & 3 Vict. c. 41, s. 78, enacts, "that the moveable estate and effects of the bankrupt, wherever situate, so far as attachable for debt, should, by virtue of the act and warrant of confirmation in favour of the trustee, be transferred to and vested in him, or any succeeding trustee, for behoof of the creditors, absolutely and irredeemably, as at the date of the sequestration."

C. and Co. carried on business in co-partnership in Scotland, and also in the Island of Tobago. A sequestration issued against them in Scotland. *Held*, by the Judicial Committee, 1st, that the statute 2 & 3 Vict. c. 41, extended to the colonies; and, 2ndly, that the *interim* factor and trustee under such sequestration, had a right against a creditor in Tobago, to moveables seized by the Provost Marshall in Tobago, under an execution, in an action brought by him against C. and Co., in Tobago, subsequent to the date of the sequestration. *Quere*, whether the Interpleading Act, 1 & 2 Wm. 4, c. 68, extends to the colonies?

By an act of the Colonial Legislature of Tobago, passed in 1841, and confirmed by the Queen in Council, it was declared, that such of the common law, and all statutes and parts of the public and general statute laws of England as are or shall be, or become applicable and suitable to the circumstances and population of the colony, should be in force in the island. *Quere*, whether by this colonial act, the Interpleading Act could be held to extend to Tobago?

And *quere*, whether, if such Interpleading Act extended to the colonies, an appeal from a judgment entered upon a feigned issue, would lie to the Queen in Council? *The Colonial Bank v. Warden*, 5 Moore, 340.

SPECIFIC PERFORMANCE.

See *Agreement for Lease*.

SCOTCH PATENT.

See *Patent*.

STOPPAGE IN TRANSITU.

Goods contracted to be sold and delivered "free on board," to be paid for by cash or bills, at the option of the purchasers, were delivered on board, and receipts taken from the mate by the lighterman employed by the sellers, who handed the same over to them. The sellers apprised the purchasers of the delivery, who elected to pay for the goods by a bill, which the sellers having drawn, was duly accepted by the purchasers. The sellers retained the mate's receipts for the goods, but the master signed the bill of lading in the purchasers' names, who, while the bill they

accepted was running, became insolvent. In such circumstances, *held*, by the Judicial Committee of the Privy Council, (reversing the verdict and judgment of the Supreme Court at Bombay,) that trover would not lie for the goods, for that on their delivery on board the vessel, they were no longer in *transitu*, so as to be stopped by the sellers; and that the retention of the receipts by the sellers was immaterial, as after their election to be paid by a bill, the receipts of the mate were not essential to the transaction between the seller and purchaser. *Cowas-jee v. Thompson*, 5 Moore, 165.

Cases cited in the judgment: *Busk v. Davis*, 2 M. & S. 403; *Whitehouse v. Frost*, 12 East, 621.

WILL.

1. *Testamentary capacity, from age or infirmity.*—*Parties pleading facts noviter ad notitiam adventa.*—Principles upon which a Court of Probate proceeds in the admission of testamentary papers of persons of alleged incapacity from age or infirmity.

Testatrix, being of the age of 86, and, as alleged, of feeble and impaired mind, having no near relations, by her will and two codicils, gave to her medical attendant (who was a stranger to her in blood, but in whose house she resided,) the bulk of her property, appointing him sole executor and residuary legatee. The will was executed in his house, and prepared by his attorney, and was at variance with her previous testamentary dispositions, which were in favour of her distant relatives. The Prerogative Court being satisfied of the testamentary capacity of the testatrix, upon the balance of evidence negating the alleged fraud, admitted the will and codicils to proof. On appeal, the sentence, so far as it related to the will and first codicil, affirmed by the Judicial Committee of the Privy Council; but a further allegation, pleading facts *noviter ad notitiam perventa*, being brought in, the second codicil was pronounced against, and the sentence of the Prerogative Court to that extent reversed. *Jones v. Godrich*, 5 Moore, 16.

Case cited in the judgment: *Marquess of Winchester's Case*, 6 Co. Rep. 25, a.

2. *Feme covert under a power.*—*Defective execution.*—*Jurisdiction of Ecclesiastical Courts.*—The Prerogative Court refused probate to a will of a *feme covert*, made in pursuance of a power, because it was, upon the face of it, not executed according to the requisites of the power: *Held*, on appeal to the Judicial Committee of the Privy Council, reversing such sentence, that such will was entitled to probate, the Ecclesiastical Courts having no jurisdiction to inquire as to the due execution of the power, but simply to grant probate, leaving it to a Court of Equity to determine the question of the due execution of the power. *Barnes v. Vincent*, 5 Moore, 201.

Cases cited in the judgment: *Brook v. Turner*, 1 Mod. 211; *Taylor v. Rains*, 7 Mod. 148; *Tatnell v. Hankey*, 3 Moore, P. C. 342.

See *Attorney; Indian Will Act*.

BUSINESS OF THE COURTS.

NISI PRIUS CAUSE LISTS.—Middlesex.

Queen's Bench.

R. Sydney	Cahill	S. J. Macdonald (stayed)	Dt. Bolton
Johnson, Son, and W.	Rowe	Cope (stayed)	Prom. Chester
S. B. Hamer	Davies	S. J. Wilkinson (stayed)	Prom. Howard
M. Fraser	Williams	S. J. Whiteway (inj.)	Prom. Mardon and P.
Adlington and Co.	Bastone and another	Ross (inj.)	Dt. Chadwick
Elderton and H.	Fiddes	Wm. Toogood (inj.)	Prom. Campbell and A.
Johnson, Son, and W.	Crowther, admix., & co. (inj.)	Edwards and another, surviving executors	Dt. Williamson
Becke	Becke	Parish and another	Dt. Helme
Jno. Lewis	Moon (stayed)	Connop	Pro. Lewis
Thomas M. Parker	Clerk (inj.)	S. J. Hughes	Pro. Burrell
Ablett	Neal	Ward (inj.)	Pro. Carlson and H.
Everest and Co.	Clutterbuck	Carter (inj.)	Pro. Ball
Wontner	The Queen	Johnson and others	Indt. E. Lewis
Wm. Day	Dawson	S. J. Macken	Pro. Wright and Co.
Kingdon and S.	Carpenter	Bowen	Dt. Young and Son
Wyche	Flocton and others	S. J. Melladew and others	Ca. G. Fry
Sutcliffe	Foster	S. J. Loftus	Covt. Lethbridge and M.
Same	Swindall	S. J. Dawson	Covt. Lewin
Same	Foster	S. J. Same	Covt. Same
Same	Swindall	S. J. Loftus	Covt. Lethbridge
Nixon	Ghislin	Gregory and another	Tres. Hodgson and B.
C. Fiddey	Jeffs and wife	S. J. The Midland Railway Co.	Ca. Parker and Co.
Wright	The Queen	S. J. Powell	Ejt. Hughes
Daves	Same	S. J. Fontainemoreau	Indt. Hobler
Cookney	Homer	S. J. Amsink	Dt. Johnstone, F. & L.
Allen and M.	Doe d. Parker & ors.	S. J. Constable	Ejt. Thos. Kirk
Kearns	Wood	S. J. Elliotson	Pro. Smith and Son
Kinder	Ryan	Clark and another	Tres. Smedley and R.—Canham in person
Humphrys	The Queen	S. J. Walker and another	Indt. Watson, B., & Son
Yallop	Kymer	S. J. De Winter and others	Ca. Jno. Williams
Warnesford	The Duke of Brunswick and Luneburg	S. J. Harmer	Ca. A. R. Steele
Willis	Allanby and others	S. J. Tomkins	Ca. J. and W. Vallance
J. Abbott	King	S. J. Bunn	Pro. Evans
R. Richards	Penfold	S. J. Lord, clk.	Tres. Pontifex and M.
Gregory, F., and Co.	Bennett	S. J. Gibson	Ca. L. Hicks
Fearon and C.	Sopwith and others	S. J. Howell	Pro. Lawrence and Co.
J. S. Arnold	Arnold	S. J. Bowes	Dt. Weston and Son
Wm. Lane	Lane and others	S. J. Hooper and another	Ca. Kilgour and P.
Gregory, F. and Co.	Houghton	S. J. Mousley	Pro. J. S. Gregory
Hodgson and B.	Parratt and another	Attwood	Dt. Holmes and Co.
Rawlings	Hankin	S. J. Hamilton	Pro. Hardwick and D.
Warnesford	Duke of Brunswick and Luneburg	S. J. James	Ca. H. W. Vallance
Keene	Knowles	S. J. Halse	Tres. Campbell and W.
Coode and Co.	The Queen	S. J. Sievier	Sci. fa. Wight
In person	Crafts	Hartopp, clk.	Pro. Parke and Co.
Lewis and L.	Potter and another	S. J. Jerdein	Pro. Dickson and O.
H. Walker	The Dean and Chapter of Christ Church, Oxford	S. J. Hicks	Dt. C. Blake
R. C. Barton	Whitmore and ors., assess.	Norton	Dt. Raven and B.
Allen and M.	Smith	S. J. Brown and another	Dt. Paterson
R. C. Barton	Whitmore, assess., & co.	S. J. Norton	Pro. Raven and B.
Branscombe	W. W. Gent	S. J. Hill	Pro. Anderson
Same	J. S. Gent	S. J. Same	Pro. Same
Ford and L.	Pierce	S. J. Delafeld and another	Dt. Pike
B. Hope	Hoare (pauper)	S. J. Coupland	Ca. Walker
G. Brown	Pratt	S. J. Hanbury	Tres. Farnell and T
G. Clark	Sheppy	S. J. Porter, exor., & co.	Pro. Waller, jun.
Miller	Miller	S. J. Reynolds	Dt. In person
Copcock	Chard	S. J. Fox	Pro. C. E. Lewis
Watson, B. and C.	Hird	Moyes	Dt. Dodds
Hodgson and B.	Gregory and wife, administratrix, & co.	Samuel	Covt. Beart
Elderton	Cameron's Coalbrook Steam Coal and Swansea and Loughall Railway Co. Registered	S. J. Wyche	Dt. In person

Wether and P. Cunningham Henderson and L.	Smith Strutt Townshend, commonly called Lord C. V. F. Townshend Lewis, executor, &c. Chesnay Conway	Mead S. J. Lowndes S. J. Foley Dawson S. J. Lomer S. J. The Great Western Rail- way Company Clements S. J. Dummelow and another S. J. Gavin Willcock Patching Brewer Finnes, esq., and others	Dt. Charles Barham Ca. Currie and Co. Hird and Son Dt. Norton and Son Pro. Martin and Co. Ca. Maples and Co. Pro. W. Lane Pro. Lloyd for D.—Neal for B. Tres. Derby and R. Pro. Penkivill Dt. Edmonds Pro. Trehern and W. Tres. Haynes and Co. and Billing Indt. Lewis and L. Ca. Rickards and W. Dt. Rackham and W. Davies and Co. Ca. Brundrett and Co. Indt. Ablett Pro. Orchard Pro. Same Dt. Hammond Dt. Same Pro. Francis Indt. Lewis and L. Pro. Freeman and Co. Ejt. Heath, jun. Pro. Amory and Co. Dt. Meredith and R.
E. W. and S. Haines C. Harries	Malpas Harris and others	S. J. Dummelow and another	Pro. Lloyd for D.—Neal for B. Tres. Derby and R. Pro. Penkivill Dt. Edmonds Pro. Trehern and W. Tres. Haynes and Co. and Billing Indt. Lewis and L. Ca. Rickards and W. Dt. Rackham and W. Davies and Co. Ca. Brundrett and Co. Indt. Ablett Pro. Orchard Pro. Same Dt. Hammond Dt. Same Pro. Francis Indt. Lewis and L.
Sole and T. Fearon and C. R. C. Barton Beales J. Lewis	Wolton Atkinson Rose Robinson Goldsworthy	S. J. Gavin Willcock Patching Brewer Finnes, esq., and others	Pro. Lloyd for D.—Neal for B. Tres. Derby and R. Pro. Penkivill Dt. Edmonds Pro. Trehern and W. Tres. Haynes and Co. and Billing Indt. Lewis and L. Ca. Rickards and W. Dt. Rackham and W. Davies and Co. Ca. Brundrett and Co. Indt. Ablett Pro. Orchard Pro. Same Dt. Hammond Dt. Same Pro. Francis Indt. Lewis and L.
Warnesford Jaques and Co. Foord Robins John Bell Frankish William Smith Same Bickley Same Monkhouse Warnesford	The Queen Holliday Crooby Mann and others Richard The Queen Price Stone Leighton Mitchell Adams The Queen	Gregory S. J. Fawcett Pery Walker Davies Wadsworth Warton and another Same Hamilton Same De Burgh Gregory, indicted with others Price Jaques Damer Whitcombe	Pro. Lloyd for D.—Neal for B. Tres. Derby and R. Pro. Penkivill Dt. Edmonds Pro. Trehern and W. Tres. Haynes and Co. and Billing Indt. Lewis and L. Ca. Rickards and W. Dt. Rackham and W. Davies and Co. Ca. Brundrett and Co. Indt. Ablett Pro. Orchard Pro. Same Dt. Hammond Dt. Same Pro. Francis Indt. Lewis and L. Pro. Freeman and Co. Ejt. Heath, jun. Pro. Amory and Co. Dt. Meredith and R.
C. Robson John Taylor	Parr Doe sev. dem. Rumball and others	Price Jaques Damer Whitcombe	Pro. Freeman and Co. Ejt. Heath, jun. Pro. Amory and Co. Dt. Meredith and R.
Strutt Cunningham	Parratt Strutt	Whitcombe	Dt. Meredith and R.
J. and C. Robinson Eliot Mackeson	Hoskins and others Page The Queen	Jones and others More S. J. Cutler and others	Dt. Smith and Son Dt. Piercy and H. Sci. fa. Chilton and Co.— Clarke and Co. Ca. Elliott Pro. Z. Brooke Pro. H. and C. Hall Tres. Temple
Clapham and B. Denton Angell G. Brown J. M. Deere	Bailey Elmore Hays Curlewis The Agriculturist Cattle Insurance Company, registered	S. J. Abraham S. J. Yates Turner Temple S. J. Fitzgerald, Knt. J. Spackman G. Spackman Bewley W. Spackman White S. J. E. Jeffries S. J. The Charing Cross Bridge Company	Dt. Wilkinson and Dt. F. S. Gosling Dt. Same Dt. Same Dt. Same Dt. Same Dt. Same Dt. Hastings Dt. Wood and B. Pro. George Ca. Pringle and Co. Dt. Arundel Pro. Jervis Covt. Cocker Ca. T. Eaton Dt. Ablett Dt. Towsey Tres. Binns Pro. Sandys Pro. S. Smith Dt. J. A. Jones
Same Same Same Same Same Same Same Bircham and Co.	Same Same Same Same Same Same Same Jackson and others	S. J. Fitzgerald, Knt. J. Spackman G. Spackman Bewley W. Spackman White S. J. E. Jeffries S. J. The Charing Cross Bridge Company	Dt. Wilkinson and Dt. F. S. Gosling Dt. Same Dt. Same Dt. Same Dt. Same Dt. Same Dt. Hastings Dt. Wood and B. Pro. George Ca. Pringle and Co. Dt. Arundel Pro. Jervis Covt. Cocker Ca. T. Eaton Dt. Ablett Dt. Towsey Tres. Binns Pro. Sandys Pro. S. Smith Dt. J. A. Jones
Tyler E. Clarke Gregory and Sons Rutler and T. Farnall and Co. Charnock Raven H. Walker James Hale H. H. Beckett M. Lewis Templeman J. M. Deere	Bury Pollett (pauper.) Maybery, exor. Scott, F. O., &c. Soames Rochfort Phillott and another Little Pope Pyke Kite Darch The Agricultural Cattle Insurance Co. registered	Webb Ryley S. J. Jones Snowden, jun. and another Marshall Trimby Hussey Dickinson Hill House Lowe Tozer Franklin S. S. Jefferies S. J. Jordan Clark Lankensu Cook	Dt. Wood and B. Pro. George Ca. Pringle and Co. Dt. Arundel Pro. Jervis Covt. Cocker Ca. T. Eaton Dt. Ablett Dt. Towsey Tres. Binns Pro. Sandys Pro. S. Smith Dt. J. A. Jones Dt. Westmacott and P. Dt. Frampton Pro. Sutcliffe Pro. Jerwood Pro. E. Moss Dt. Beales
Same Bruscombe J. and C. Rogers Dix Julius and C.	Same Benson Johnson Roberts and another Corfield	S. S. Jefferies S. J. Jordan Clark Lankensu Cook	Dt. Westmacott and P. Dt. Frampton Pro. Sutcliffe Pro. Jerwood Pro. E. Moss Dt. Beales

J. Porter	Maynes	Cox	Peterson
J. Porter	Webb	Wagner	Stretton
J. and J. de Boos	Myers	Towatt	Trov. Wood and F.
Elderton,	Cameron's Coalbrook		
	Steam Coal and Swan-		
	sea and Loughor Rail-		
	way Co. registered S. J.	W. Danford	
Same	Same	S. J. J. Danford	Dt. A'Beckett and S.
Walter, Grant, and Co.	Doe several dams. Consent,		Dt. Same
	Esq. and others S. J.	Shaw	Ejt. Davies, Son, and Ca.
Same	Same	Sidney	Ejt. Starling
Litchfield	Williams and another	Fowler	Dt. Trail
Thomas Hicks	Ward	Hart	Pro. In person
Rowlatt	Goodman	Pocock	Pro. Poole
M. Newton	Newton	Bishop	Pro. Dolman
Warsand	Jones	Alexander and others	Ca. Champion and B.
J. and C. Rogers	Rogers	Russell	Dt. Rowlatt
In person	Harrison	Lloyd	Dt. In person
Mayo	Easton	Burrell	Pro. Hornby and T.
J. Billing	Quicke	Lyte, executrix, &c.	Annesley
Dyte	Joel	Milles	Pro. Desborough and Ca.
Kemp	Donaldson	Graham	Dt. In person
Willoughby and C.	Gilkes	Cooper	Dt. M. G. Smith
Keene	Grubb	Crabb	Dt. Hook
John Bennett	Roberts	S. J. De Zulueta and others	Pro. Lawford's
J. B. Wilson	Ellis	Baker and others	Ca. Palmer, F. and P.
Boulton	Doe d. Dennia	Fellows	Ejt. Johnson, F., and L.
Beales	Holmes	S. J. Hamilton	Dt. Bickley
Sharman	Cocks	Edwards and another	F. Isa. Jay
Harbin and W.	Trail and others	S. J. Grey and others	Ca. Cree and Son
W. C. Gates	The Queen	Osmond and others	Indt. E. L. Levy for Sur-
J. B. May	Sinnott	Norton	Pro. Robson [in
Pocock and P.	Franklin	Clethier	Pro. Pain and H.
In person	Bigood	Harrison	Pro. Vincent
C. J. Jones	Moorewood and another	Steele, Esq.	Ca. Solomon
Beart	Paine	Bell	Dt. Kempson
George Wilson	Haymen	M' Rae	Dt. I. Matthews
Kirk	Howard	Dawson	Ca. Few and Co.
Charles Wilkin	Fugh	J. S. Salmon	Dt. Venning and Co.
Solr. Treasury	The Queen	J. S. Mehen	Indt. Gibam
A. D. Smith	Hale	Lansley	Tro. Church and L.
Tatterahall	The Manchester, Sheffield,		
	Lincolnshire Rail. Co.	Lamb	Dt. Sudlow and Co.
T. A. Jones	Mearne	Robinson	Ca. W. G. Slack
J. A. Jones	Sires	Reddall	Ca. Mitton & Co.—Jones
J. Bird	Blanchard	Ripley and another	Ca. Tyas & Son [2 sons
Pocock and P.	Willis	Newton	Pro. C. Young
Wontner	Davies	Hassell and another	Tres. Bolton
Lawrence and P.	Rees	S. J. Brough	Issue, Brough
Skilbeck and H.	Beck and others	Newton	Dt. Clark and Co.
Hall and Co.	Doe d. Barnes and ans.	Newnham and another	Ejt. Hutchinson
Riley (in person)	The Queen	Hart, indicted with others	Indt. Walter
Willoughby and Co.	Cocks	Rowland, jun.	Pro. John Shaw
Same	Baker	Munn	Pro. S. Smith
Same	Taplin	Church	Pro. I. A. Jones
J. Bird	Farnham	Thorn	Tres. Stephen
Same	Hopper	S. J. Baker	Dt. Baker and Co.
Dyte	Joseph	Bordenave	Pro. Pain and H.
Pocock and P.	Doe d. Peacock	Hyett	Ejt. Darke
Goode	Doe d. Goode and ans.	Austin	Ejt. Cooper
Dolman and S.	Horsey	Littler	Dt. S. Smith
Thompson and D.	The Queen	S. J. Owen	Indt. Lefroy
Same	Same	S. J. Same	Indt. Same
Wontner	Barker	Cape and wife	Tres. Hussey and Co.
Kirk	Wilson	S. J. Hale	Dt. Austen
Wetherfield	Seage	Killick	Philp
Lewis and Co.	Beverley	Ibbetson, Bart.	Pro. Currie and Co.
Parker and Co.	Pritchard	S. J. Thompson	Pro. Wire and C.
Same	Same	S. J. Wheelton	Pro. Same
J. Nichols	Shaw, assignee, &c.	Haswell	F. Isa. Mayo
Starling	Robinson and another	Stickley	Tres. Weeks
T. Smith.	North and another	Baker	Dt. Walters and Son
T. Smith	Same	Bloomfield	Dt. Rickards and W.
Watson	Simmonds	Simmonds	Dt. Lloyd
C. Robson	Adcock	R. West]	Pro. Rippingham and R.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, JUNE 9, 1849.  
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BANKRUPT LAW CONSOLIDATION BILL.

A FRESH edition of the proposed Bankruptcy Bill has been printed by direction of the House of Lords,* and also "a Statement in support of the Bill," showing the Necessity and Importance of a Chief Commissioner; the Reasons for the proposed Increase in certain of the Salaries; the Fees abolished; the present Charge; the Charge to be provided for, and Mode of meeting it, and the eventual annual Saving to be effected by the Bill.

As we were amongst those who could not readily understand why it became expedient to have a Chief Commissioner, when the proposed Court of Appeal, consisting of three Commissioners, was abandoned, a sense of fairness suggests, that we should submit to our readers the grounds upon which the supporters of the Bill, insist upon this alteration in the constitution of the Court. As to the sufficiency of these reasons we shall only remark, that if the proposed appointment tends in any material degree "to secure a uniformity in the practice of all the Courts," as suggested in the printed statement, the additional salary of 500*l.* per annum, which (with an addition of 250*l.* per annum to the senior Registrar) is the total amount of increase consequent upon the appointment of a Chief Commissioner, will be well bestowed.

"The necessity and importance of a Chief Judicial Officer is recognized in all our Courts; and in no Court will the advantage be more felt than in the appointment of a Chief Commissioner in the Court of Bankruptcy. It is very essential to have a Chief Commissioner conversant with the working in detail of the whole system of the Court, and with whom the

different Commissioners and other officers, both in London and in the country, may have free communication on any matters connected with the administrative part of the system. It will be the duty of the Chief Commissioner to consider from time to time the necessary rules to be made for regulating the practice of the Court, the duties to be performed by the different officers, and the forms of proceedings, and to secure a uniformity in the practice and proceedings in all the Courts; and this last will be more particularly requisite under the proposed new procedure to obtain adjudication of bankruptcy by petition. There are many matters also which must be done by *some one* Commissioner, and these will be performed more satisfactorily to the public by a Chief Commissioner.

"It is good policy too, with regard to the efficient discharge of judicial duties, to have a chiefship to which all may naturally aspire. The present salaries of the London Commissioners are 2,000*l.* a year; it is proposed to reduce the number of the London Commissioners from six to four as vacancies occur, and that the salary of the Chief Commissioner shall be 2,500*l.*, being the amount of the salary of a Master in Chancery."

Independently of the Chief Commissioner and senior Registrar, it is proposed by the new Bill to increase the salary of the Chief Registrar, from 1,200*l.* to 1,500*l.* a year, chiefly upon the ground, that such of the duties of the abolished offices of Secretary of Bankrupts, Clerk of Enrolments, and Registrar of Meetings, as may remain, are to be discharged by the Chief Registrar. It is also proposed to increase the salary of the country Registrars from 800*l.* to 900*l.*; and to add 300*l.* to the salary of the Master, which is at present 1,200*l.* It is justly observed, in the printed statement referred to, that "the office of Master is a laborious one, and that the holder ought to occupy a position above temptation;" and it is suggested, that the work of the Taxing Master in Bankruptcy, which now equals that of

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any one of the Taxing Officers in Chancery, will be increased by giving a primary jurisdiction in all matters in bankruptcy to the Commissioners.

Whatever opinion may be entertained as to the expediency of the proposed increase of salaries, we apprehend there will be entire unanimity in regard to the proposed *abolition of fees*. Where large estates are administered in bankruptcy, the Court fees do not amount to a sum which can be considered as comparatively large, but an apprehension of the expense consequent upon the administration of an estate in bankruptcy, when the assets are known to be limited or uncertain in amount, has operated very generally, in combination with other circumstances, to prevent creditors from resorting to that tribunal when any other means of winding up the affairs of an insolvent estate have been deemed practicable.

The following is a list of the abolished Court Fees, which we are glad to observe includes the fee of 1s. 6d. for swearing each affidavit, the receipt of which, occurring as it did constantly, not only within sight of the Commissioner but at his elbow, has always appeared to us as peculiarly unseemly and objectionable in a Court of Justice.

"Fees abolished."

	£	s.	d.
Docket struck, and not acted upon . . .	1	12	6
Renewed fiat and auxiliary fiat . . .	0	12	0
Certified copy declaration of insolvency . . .	0	2	6
Certificate to authorize advertisement in Gazette . . .	0	2	6
Filing affidavit or other document . . .	0	1	0
Filing fiat . . .	0	1	0
Search warrant . . .	0	5	0
Swearing affidavit . . .	0	1	6
Order made in any matter heretofore within the jurisdiction of the Court of Review . . .	1	0	0
Order Nisi . . .	0	5	0
Order absolute . . .	0	5	0
Minute of order . . .	0	2	6
Certificate of bankrupt's conformity for entering every matter for hearing in a Subdivision Court . . .	0	1	0
For every order pronounced there . . .	0	5	0
For fees on the trial of every issue, to be paid by the successful party . . .	2	0	0
Subpœna ad testificandum or other writ . . .	0	2	0
Fee on every sitting . . .	0	10	0

"The 20l. and 10l. fees payable out of the first monies, the 1l. fee on every sitting, and the 3l. fee on sittings on old estates, are also abolished, and a per-centage on the gross amount of the assets substituted. The per-centage levied is not expected to exceed three-and-a-half or four per cent."

Before quitting the fiscal and financial

topics contained in the printed statement, we may mention, that the present charge of the whole establishment of the Court of Bankruptcy in town and country is 101,354l. 9s. 7d. This sum is exclusive of the per centage paid to the official assignees, but it comprehends the very large sum of 27,154l. 19s. 7d. for *compensations*, which may be described as in the nature of *dead-weight*. The last-mentioned sum is composed of the following items, all of which are paid out of the Secretary of Bankrupts' Compensation Account.

	£	s.	d.
Thurlow, patentee . . .	7,352	14	6
Hanaper Officers . . .	690	16	9
Eight London Commissioners, 200l. each . . .	1,600	0	0
Chancery officers . . .	1,234	8	4
Country Commissioners . . .	16,277	0	0
Total amount of compensations	£27,154	19	7

It must be added, that the compensations will be gradually reduced by deaths, and that the eventual annual saving effected by contemplated reductions, amounts to 11,260l.

With respect to the alterations introduced in this recent edition of the Bill, we can only afford space to glance at those which appear to us to be the most important. A distinct section, consisting of six articles, has been introduced into the chapter relating to Arrangements between Debtors and Creditors, under the title of *Arrangements by Deed*. The articles comprehended in this division of the Bill, and which, as we have already had occasion to remark, were suggested by the Council of the Law Institution, are too extensive to print at length, but the substance is as follows:—

"Art. 289. Every deed of arrangement entered into between any debtor and his creditors, and executed by nine-tenths in number and value of the creditors whose debts amount to 10l. and upwards, to be binding on all.

"Art. 290. Deed not to be effectual upon creditor who has not signed, until after expiration of three months from notice of suspension, and of proposed deed, &c., unless Court shall otherwise order.

"Art. 291. Trustee or inspector, &c. to certify as to proper number of creditors having signed, and certificate to be filed in Court, and be *primâ facie* evidence.

"Art. 292. Certificate to have account appended, and to be verified by affidavit of arranging debtor.

"Art. 293. Creditors to have the same rights as in bankruptcy, and not to be prejudiced as to third persons.

"Art. 294. Any creditor may apply to the

Court of Bankruptcy in case of improper administration."

There are many other articles in the amended Bill well deserving of consideration, and which we shall probably take an early opportunity of adverting to.

For the present we have to observe, that the proportion of creditors necessary to carry an arrangement out of Court into effect is too high: six-sevenths, instead of nine-tenths, would be quite sufficient; and this view is taken by the Law Societies, both in town and country, and they are the best judges of the operation of the clauses, and will, of course, be the persons to carry them into effect.

It is understood that the illness of the Lord Chancellor and his absence from the House of Lords, is the immediate obstacle to the progress of the bill through that branch of the Legislature. All parties admit, it would be matter of regret that such a measure should not have the benefit and sanction of Lord Cottenham's sound judgment and extensive practical experience. How the Bill will be received in the House of Commons when it arrives there, it would be premature to anticipate.

The following is stated to be the total eventual saving per annum.

Saving in salaries (4 judges) . . .	£11,260
Fees abolished (2 judges) . . .	2,500
10s. Fee in every sitting, abolished . . .	4,675
Fees of Secretary of Bankrupt, ditto . . .	300
Fees of Clerk of Enrolment and his Clerk, abolished . . .	1,000
Fees of Registrar of Meetings, abolished . . .	800
Fees of two messengers, abolished . . .	1,200
	<hr/>
	£21,735

NOTICES OF NEW BOOKS.

The Rights and Liabilities of Husband and Wife. By JOHN FRASER MACQUEEN, Esq., Barrister-at-Law. London: S. Sweet. Pp. 354.

THIS volume, forming the Second Part of the work, completes Mr. Macqueen's valuable Treatise on the Rights and Liabilities of Husband and Wife. The work, in its entire scope, comprises,—1. The Contract of Marriage. 2. The Rules of Property thence arising. 3. The Wife's Debts, Equities, and Necessaries. 4. The Husband's powers and responsibilities. 5. Marriage Settlements. 6. Separate use. 7. Deeds of Separation. 8. Custody of Children. 9. Divorce. 10. Practice on

acknowledgments of Deeds by married women.

In the Second Part just published, the Author treats,—1st, of Ante-nuptial Agreements; including promises to marry and promises and agreements in consideration of marriage; requirements of the Statute of Frauds; agreements binding on one side though not performed on the other; of the terms and construction of ante-nuptial agreements; and of promises and agreements by infants. 2nd, Marriage Settlements,—comprising settlements in pursuance of ante-nuptial articles; ante-nuptial settlements; and post-nuptial settlements. 3rd, Equitable rights of married women, wherein of the separate use, its origin and nature; the wife's dominion over her separate property; the separate use with and without restraint upon anticipation; pin-money; and wife's separate trading. 4th, Separation of Husband and Wife by private arrangement,—comprehending conflict of the civil and ecclesiastical jurisdiction; deeds of separation; and miscellaneous points as to deeds of separation.

Mr. Macqueen's work will doubtless take its place amongst the standard Treatises of the Law. He has not confined himself to the collection and arrangement of the Decisions of the Courts, but has discussed the grounds and reasons thereof. The plan of the book is excellent. It treats first of general rules and then of exceptions and special cases. The work is at once practical and scientific. The subject-matter has been distributed according to the order of time, and the simpler cases prepare the way for the complex. Mr. Macqueen, in justification of his Commentaries on the decisions, well observes, that "The remarks of a legal writer may be of use in practice. He has his mind full of the subject. All the authorities have been reviewed by him. He finds a case, which in the language of the Courts 'stands alone.' By a word or two he may prevent it from misleading. He puts readers on their inquiry, and, by inducing an exercise of thought, fixes legal principles in the reason as well as the memory."

The policy of the decision in *Purdew v. Jackson*, (1 Russ. 1), has been much questioned. Mr. Macqueen observes, that the objections to it deserve attention: they are grave if not conclusive:—

"Where, it is asked, is the wisdom of allowing a married pair and their children to starve when the wife has a reversionary chose in action adequate to supply their wants? and

where is the consistency of maintaining such a rule in one species of property, and violating it in another? If it be the perfection of justice to lock up the wife's reversionary interests in personalty, why are her reversionary interests in realty left at the disposal of herself and her husband? Two things the opposites of each other cannot be right. But of the power over the wife's real estate no complaints are heard; because from this power no inconvenience is felt, but on the contrary, great utility arises. The provisions for separate use, the restraint upon anticipation, and the equity to settlement are contrivances amply sufficient for the wife's security. She is more likely to lose than to gain by the enforcement of a rule which makes property to depend, not upon right, but upon accident. Thus, where as occasionally happens, a purchaser chooses to rely on the honour of a married woman, he may buy her reversionary chose in action, notwithstanding legal rules. But he incurs a risk, in respect of which his price will not come up to more than a half or a third of the true value of the property. In such a case can it be doubted that the chief sufferer (supposing her to act honestly) is the wife herself?

"In other cases insurances are effected, but always at a sacrifice; of which the wife feels the severity.

"The opponents of *Purdew v. Jackson* further contend that 'it has thrown out of the market many valuable interests. And when the principle or theory of the decision is examined, it will be found unsatisfactory; for it professes to be bottomed on the maxim, that equity follows the law. But the interest in *Purdew v. Jackson* was an interest known only to equitable jurisdiction; to which there is nothing analogous at law.' The law therefore imposed no restraint upon the Court; which, in making a new precedent, was free to consult the plain dictates of convenience and utility.

"The analogy recognised between a legal chose in action and a trust fund in equity is not a little forced and metaphorical. But it seems to fail still more when the property (as in *Purdew v. Jackson*) is actually in Court; for in that case, the money has been recovered, and is secure. There may indeed be a contest between rival claimants of the fund; but there can be no question with the party against whom, if the case were subject to legal jurisdiction, an action would have laid to compel payment.

"Better, therefore, say the opponents of *Purdew v. Jackson*, would it have been to give effect to the husband's assignment of the wife's choses in action, subject to her equity. This (which was Lord Hardwicke's notion,) would have enabled the husband to make use of the wife's property during the coverture; and, at the same time, would have secured a provision for her in the event of survivorship.

"Arguments of convenience induced Courts of Equity long since to disregard, or evade, the legal rule which says, that choses in action cannot be assigned; and it may be doubted

whether similar considerations ought not also to have moved them to go a little further, and dispense, in many cases, with that manual apprehension which lawyers denominate a reduction into possession.

"Such are the objections which have been urged against this celebrated decision, which, however, has kept its ground for now more than a quarter of a century."

The learned author also has reviewed the recent decision of the Lord Chancellor in *Whittle v. Henning*, in which the facts were shortly these:—

"A fund in Court was held, under a marriage settlement, upon trust to pay the dividends to the husband for life, then to the wife for life, and then, upon trust, to pay the principal to such child or children of the marriage as the husband and wife should appoint. The husband and wife made an appointment in favour of one son. Soon afterwards this son relinquished his interest to his mother; in order that her life estate might expand into an absolute interest, expectant on the husband's death. Finally, the husband himself assigned and surrendered to her his life estate. It was then assumed that the fund had, by virtue of the process here resorted to, become a present interest which the husband could claim or transfer subject to the wife's equity to a settlement. But the real object of the machinery was ultimately to vest the property in the son, for whose benefit and advancement in life his parents intended it. Accordingly, they presented a petition praying that the fund might be transferred to him. This petition came, in the first place, before Lord Langdale, to whom sundry precedents were cited in support of the application. In particular, the case of *Hugonis v. Hall*, before the Vice-Chancellor of England, was relied upon; and it was alleged, that upon the strength of these authorities a practice had grown up, and large sums of money had been paid away. But, on the other hand, it appeared that in *Story v. Tange*, Lord Langdale had declined to follow upon petition the precedents which had been made by the Vice-Chancellor of England, thinking the matter too important to be decided without bill filed. The consequence was that, when the application in *Whittle v. Henning* came before his lordship, he simply dismissed the petition, retaining his former views. In other words, he refused his assistance to the petitioners. An appeal was then taken to the Lord Chancellor, who, though he did not appear to feel the hesitation expressed by Lord Langdale, took time to consider; and ultimately pronounced judgment, holding that the interest of the wife continued still reversionary, and unaffected by all that had been done."

Referring to our notice of the first part of this volume, we must here close our observations and extracts.

NEW Statutes effecting Alterations in the Law.
 does not receive the whole of the Act.
 12 VICT. with

An Act to provide a more effectual Regulation and Control over the Maintenance of poor Persons in Houses not being the Work-houses of any Union or Parish.

[11th May, 1849.]

1. *The Poor Law Board to issue rules and regulations to houses where the poor are maintained under contract.*—4 & 5 W. 4, c. 76.—

Whereas poor persons are sometimes lodged and maintained under contracts or agreements for certain payments in houses and establishments not being the workhouses of any union or parish, nor subject to the effective control of any guardians or overseers or other parochial authorities, and no sufficient powers are vested in any authority to regulate the houses or establishments wherein such persons are lodged and maintained, and it is expedient that such powers should be given: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That it shall be lawful for the Commissioners for administering the Laws for Relief of the Poor in England, and they are hereby required, from time to time as they shall see occasion, to make and issue all such rules, orders, and regulations for the management and government of any house or establishment wherein any poor person shall be lodged, boarded, or maintained, for hire or remuneration, under any contract or agreement entered into by the proprietor, manager, or superintendent of such house or establishment, or on his behalf, with any guardians, overseers, or other persons having the ordering or management of the poor in any union or parish, or for the education of any poor children therein, in like manner and to the same extent as the said Commissioners are by law empowered to do in the case of any workhouse belonging to any union or parish; and all such rules, orders, and regulations shall have the like effect as other rules, orders, and regulations of the said Commissioners, and shall be obeyed accordingly, with the like penalties on any neglect or disobedience thereof, to be enforced upon summary conviction, as penalties under the act of the 5 W. 4, intitled "An Act for the Amendment and better Administration of the Laws relating to the Poor in England and Wales," may now be enforced.

2. *Nothing herein to extend to lunatic asylums and hospitals.*—Provided nevertheless, and be it enacted, That nothing herein contained shall extend to any county lunatic asylum or hospital registered or house licensed for the reception of lunatics, nor to any hospital, infirmary, school, or other institution supported by public subscriptions, and maintained for purposes of charity only.

3. *Rules and regulations to be directed to the manager or officer of the establishment.*—And be it enacted, That the said Commissioners may direct their rules, orders, and regulations to any person being or acting as the proprietor, manager, or superintendent, or as an officer or assistant, in any such house or establishment as aforesaid, and the same shall come into operation so soon as the said Commissioners shall therein declare, and shall be binding upon the person named therein, and, if they shall so direct, upon every person who shall afterwards succeed to him in the same capacity.

4. *Poor Law Board may prohibit the reception or retention of poor in any such house.*—And be it enacted, That the said Commissioners shall be empowered, if at any time they shall see just cause, to prohibit, by order under their seal, the reception or retention of any poor person, or any class of poor persons, in any such house or establishment, and thereupon it shall not be lawful for any such proprietor, manager, or superintendent, or other officer or assistant, to receive or retain any poor person therein, contrary to the terms of such order, so long as it shall be in force, nor for any guardians, overseers, or other such persons as aforesaid, to send any poor person to such house or establishment, contrary to such order, provided that no such guardians, overseers, or other such persons as aforesaid, nor any officer of any union or parish, shall incur any legal responsibility in respect of the neglect of such order, until a copy thereof shall have been sent to the guardians of the union or parish, or to the overseers of the parish, or other such persons as aforesaid, in the manner in which orders of the said Commissioners are now sent to guardians or overseers.

5. *Poor Law Board may remove any officer of such house.*—And be it enacted, That the said Commissioners may, by order under their seal, remove from his office or service any officer, servant, or assistant in any such house or establishment whom they shall deem unfit or incompetent to discharge the duties of his situation, or who shall at any time refuse or wilfully neglect to obey and carry into effect any of the rules, orders, or regulations issued by the said Commissioners under their seal for the regulation of such house or establishment, or of the officers or inmates thereof; and thereupon such officer, servant, or assistant shall forthwith cease to act in his office, service, or employment, and shall be entitled to claim and recover a rateable proportion of his salary, wages, or other remuneration up to the time of his being so removed, but no more, from the person liable to pay the same, subject to any defence at law which may then be open to the person from whom the same shall be claimed.

6. *Poor Law Board may regulate contracts.*—And be it enacted, That the said Commissioners may from time to time issue any order which they may deem necessary for regulating the mode in which any contract shall be entered into for the lodging, boarding, or main-

tenance of any poor person, with the proprietor, manager, or superintendent of such house or establishment as aforesaid, or the terms or the duration of any such contract; and if after the issuing of any such order any contract or agreement be entered into with such proprietor, manager, or superintendent, or any person on his behalf, not in accordance with such order, the same shall be voidable, and, if the said Commissioners shall so direct, the same shall be void and of no effect; and all payments made under or in pursuance of any contract or agreement not made and entered into in conformity with such order as aforesaid, at any time after the said Commissioners shall have declared the same to be void as aforesaid, and shall have given notice of such declaration to the guardians, overseers, or other such persons as aforesaid, shall be disallowed in the passing and auditing of their accounts, or the accounts of any of their officers by whom such payments shall have been made or charged.

7. *Persons may be appointed to inspect houses and the poor maintained therein.*—*Remuneration to such persons.*—And be it enacted, That the said Commissioners may, if they think fit, appoint a person either temporarily or permanently to visit any such house or establishment, and to inspect the same, and the poor persons received and maintained therein, and to make a report to such Commissioners upon any visit and inspection; and such person shall be paid by the guardians or overseers, as the case may be, of the several unions or parishes from which poor persons shall have been sent, and shall be at the time of such visitation maintained therein, such remuneration as the said Commissioners shall by order under their seal direct.

8. *Power to justices to visit houses.*—*Power to General Board of Health to appoint a superintending inspector to visit houses and examine officers, &c.*—And be it enacted, That it shall be lawful for any justice of the peace acting in and for the jurisdiction in which such house or establishment shall be situated, to visit, inspect, and examine the same, at such times as he shall think proper, for the like purpose and with the same power as any justice has now by virtue of the act hereinbefore mentioned of the fifth year of his late Majesty in respect of the workhouse of any union or parish; and it shall be lawful for the General Board of Health, where they shall think proper, by order under the seal of the said board and the hands of any two or more members thereof, to authorize a superintending inspector to visit and inspect from time to time, or at such time or times as such board shall direct, any such house or establishment, and to ascertain the state and condition of the same, and of the poor people therein, and to report thereon to the board; and it shall be lawful for such superintending inspector accordingly so to visit and inspect, and to ascertain such state and condition, and to examine any officer, servant, assistant, or inmate of such

house or establishment in relation thereto; and the powers seem to go on to the Public Health Act, 1848, cases, with to the examination of persons in law, purposes of an inquiry under such act, a superintending inspector, shall extend as applicable to the examination of such officers, servants, assistants, and inmates.

9. *Interpretation of .*—And be it enacted, That the several words used in this act shall be construed in the same manner as in the said act of the fifth year of his late Majesty, and the statutes explaining and amending it, and all the provisions, enactments, and regulations contained in the said act and the said subsequent statutes shall be extended to this act, so far as the same may be applicable, and subject to the provisions herein contained.

10. *To apply to England and Wales only.*—And be it enacted, That this act shall extend only to England and Wales.

11. *Act may be amended, &c.*—And be it enacted, That this Act may be amended or repealed by any act to be passed in this present Session.

STATUS OF ATTORNEYS.

To the Editor of the Legal Observer.

SIR,—A great deal has lately been said as to the standing in society of attorneys and solicitors in the present day. It has been alleged, and I am afraid with great truth, that as a class they stand in a very unenviable position: they are not looked upon as honourable and useful members of the public, belonging to a gentlemanly and learned profession. As an attorney and solicitor, I must confess with great pain, that society generally does entertain this bad opinion of my profession, and I have endeavoured to find out a reason, and believe I have succeeded. The profession, no doubt, it must be admitted, is overcrowded, and has amongst its numbers a great many scamps. Now, how do these scamps get into the profession?—a profession which ought only to enable men of good circumstances to enter it. It is the pernicious system of the liberal-minded attorney giving his managing clerk his articles and paying him a salary during his service. This clerk, in most instances, comes from a family with no means whatever; he has no other education than merely learning to read and write, and having entered his master's office as an office-boy, he has been subjected to the drudgery and menial services office-boys have to perform—consequently from the time of their birth they have no opportunities of understanding gentlemanly conduct and bearing, nor have they the refined ideas that a member of a learned profession ought to possess. It must be conceded that the youth whose parents can afford to pay a premium of 300 guineas (sometimes 400 and 500 guineas) to be articled to a solicitor, in addition to the very heavy stamp duty 120*l.* and other fees—

and which youth does not receive one farthing remuneration during the whole five years—it must, I say, be conceded that such a youth is more likely to have received a proper education and to have mixed with good society, and therefore have received a higher perception of nice and honourable notions than a youth whose parents can give him no other education than what a charity school imparts, and who enters his master's office as a boy to run errands. Both youths may be diligent and honest, but one thinks of what society will say of his actions, the other laughs at the idea, and thinks that so long as he does not break the law he is doing everything that is right—what does he care for the opinion of society—his society, his friends, look upon him as the gentleman of the family, and so long as he has money, do not look into the manner of getting it if it has been *legally* obtained. I say, Sir, that this system is the cause of the degradation of our profession; it overcrowds it, and thereby prevents the man of education from making a living, and also brings into it a class of men who disgrace it.

I own that I have been very severe in my observations, but let any man of us candidly look into his dealings with the profession generally, and he must admit that he has received the most uncourteous and unprofessional conduct from men who have risen from the drudgery of the office. I have many such men in my eye at this moment, and, no doubt, your readers from experience could swell the numbers. I readily admit that there are, and have been, several most honourable exceptions to the rule I have laid down, but such exceptions are, I am sorry to say, within my knowledge but few.

It is for the public benefit that the attorney should be a man of education and honourable feelings, and therefore the legislature ought to do all it can to promote such a result. The legislature cannot say what premium an attorney shall take with his clerk, that must depend upon circumstances; but it can say that the clerk shall receive no salary from his master, either directly or indirectly, during his articles; this would prevent the evil I have complained of in a great measure, as the clerks who have obtained their articles by gift could not exist without a salary; but I think the profession ought to provide the remedy themselves. We find the barrister, during the time he is eating his terms preparatory to his call, is not allowed to receive a salary from any occupation; and in some of the Inns there is a regulation that no one who has been a barrister's clerk shall be called—that is, no one who has in that branch been employed as a menial; and I believe the proctors have a regulation amongst themselves not to take a pupil without a fee of a thousand guineas. If that be so with the other branches of the same profession, why should not the attorney adopt a similar safeguard and preventive? The legislature has done something to force respectability by demanding a high stamp duty

from the pupils of attorneys and proctors; this did not keep out objectionable parties, and the proctor then adopted a more stringent rule, and what is the result? It is this, that the profession of the attorney is overrun and not respected, whilst that of proctor is select and much respected.

There is another matter I will slightly advert to: the attorneys do nothing to make themselves respected; they do not, as proctors do, adopt any course by which they may be known in their own Courts from the mob, and what is the consequence? any person who wants a seat in Court says he is an attorney—he sits where attorneys ought only to sit—and it must be admitted there is a very motley unwashed set always sitting on the seats reserved for attorneys. This set of unwashed pass for attorneys, and how are the barristers and judges to know the contrary? Their appearance does not demand the slightest respect, and then the whole class are snubbed. I am convinced that if we were to adopt the old forensic costume, that both the Bar and the Bench (knowing who we were) would treat the attorneys with more respect than at present. We do not find that the proctor is submitted to the same painful allusions from the Bar that the attorneys are, although the opportunities and occasions are the same, and I can only account for the difference by the bearings of the different parties.

I am an attorney and solicitor of some years' standing, and I feel a great interest in the welfare of my branch of the profession. I have often considered over the causes for the deterioration of it in the public mind, and have come to the foregoing conclusions. If you think that I am not far from being right, I know that you will do anything which is likely to remedy the evil; and I therefore submit my remarks to you, that the subject may be brought before your readers.

AN ATTORNEY.

EXCLUSIVE JURISDICTION OF THE COUNTY COURTS.

PROPOSED ALTERATIONS.

THE trouble and inconvenience of attending the trial of causes in the County Courts are considered as evils by many persons whose time is fully occupied, and by others who, from age, infirmity, or other circumstances, are unable or incapable to attend to such matters, and which clearly have caused the great accumulation of business in the Palace Court, wherein it is conducted in a manner similar to that of the Superior Courts.

Why then should the new Courts be exclusive? Why should they not be concurrent, *ultra 2*l**, or *5*l**, at the most, as were the majority of the old Courts of Request? so that such persons might freely sue in a Superior Court as formerly, wherein their personal attendance is not required, even in the case of a trial, and wherein only about 5 per cent. of the

causes commenced therein are actually tried, the rest being all settled immediately or otherwise in various ways by the attorneys out of Court, without any trouble to the parties or their witnesses; whereas in the County Courts all the causes are tried, or at least the parties are occasioned just the same trouble and expense in preparing for trial and attending the Court for that purpose.

Besides, it is submitted that the practice of the County Courts is impolitic, if not often decidedly dangerous, (considering the frailties of human nature,) in permitting the parties to be their own witnesses, which was always viewed as one of the chief objections to the old Courts of Request, as having a direct tendency to the encouragement of perjury;—that this sad crime is often committed by persons when placed in a similar position, is but too plainly proved by the repeated complaints on the subject, made as well by the judges of the Insolvent Debtors' Court as of other Courts; which, it is submitted, abundantly shows the necessity of diminishing, rather than of extending, a system manifestly unsound and contrary to the long-established principles of the common law of this country.

Nevertheless, I seek not to injure, but what will ultimately benefit the County Courts, namely, to render them less objectionable, and consequently they will soon become more respected, which I am convinced will be best effected by repealing their exclusive jurisdiction, so that creditors may have the option of resorting either to an Inferior or a Superior Court, as may be most convenient; and that no debtor should be damaged thereby, the costs of small actions in the Superior Courts which have been already (at least the attorney's part) materially reduced, might be lowered, either by a graduated scale or otherwise, to an amount just about corresponding with those of the County Courts. Why should the prime cost of the writ, and of most of the other parts of the machinery of actions in a Superior Court be the same, whether for 2*l.* or for 2,000*l.*? Parliament has by its acts repeatedly sanctioned a sliding scale in these matters at all events. The new Courts are as yet merely experimental, and consequently the more subject to modification as circumstances require. That law in this respect must be best which most suits the feelings and convenience of all the multitudinous members of the community. The County Courts, doubtless, will always have sufficient occupation. Indeed those of the metropolis and of some of the other great towns are, it is believed, often much overcrowded, and consequently an additional inconvenience to the public.

As the Bankruptcy Courts in the country are few and far between, and therefore very inconvenient, and as the country County Courts now adjudicate in matters of insolvency, it is submitted whether they might not do so advantageously in bankruptcy also, where there is no Bankruptcy Court within a certain distance.

The following are some of the benefits which would be produced to the public by the adoption of my suggestion, viz.:—

1st. A saving of time and trouble to such persons as those above-mentioned by suing in a Superior Court.

2nd. A pecuniary saving to the defendants in all the actions now allowed to be brought in the Superior Courts for debts under 20*l.*

3rd. Fewer applications to those Courts for prohibitions, &c., as to proceedings in the County Courts.

4th. The speedy and almost entire destruction of the great business in the Palace Court, without the cost of any compensation whatever to the public, and which Court, it appears pretty plainly, cannot be entirely closed, at least not without an immense expense.

Now all that is necessary to effect these salutary reforms is merely a short act of parliament, repealing the 129th clause of the 9 & 10 Vict. c. 95, and authorising the Judges of the Superior Courts (as before has been done) to make rules for the further reduction of the costs, and especially of the money first payable on issuing or instituting the proceedings in causes in those Courts for recovery of debts not exceeding 20*l.*, and which it is verily believed will afford a cheap, simple, and satisfactory cure for all the complaints upon the subject, including even that as to the Palace Court, without at all disturbing the New County Courts.

VINDEX.

QUESTIONS AT THE EXAMINATION.

Trinity Term, 1849.

I. PRELIMINARY.

1. Where, and with whom, did you serve your clerkship?
2. State the particular branch or branches of the law to which you have principally applied yourself during your clerkship.
3. Mention some of the principal law books which you have read and studied.
4. Have you attended any and what law lectures?

II. COMMON LAW, AND PRACTICE OF THE COURTS.

5. What is the usual mode of commencing an action at common law?
6. When a writ has been served, what is the next step the plaintiff takes, and what must he take care is the state of the parties before he takes such step?
7. Supposing personal service of a writ of summons cannot be effected, is there any and what remedy, and how is it to be obtained?
8. If a plaintiff apprehends, after service of a writ, that the defendant is going out of the jurisdiction of the Court from whence the writ issues, is there any and what means of stopping him, and how is it to be effected.
9. What is the meaning of the word *venue*,

and what are the rules to be observed respecting it?

10. Has a defendant any power of altering the venue? and what are the necessary steps to be taken by him? and can it be done in every sort of action?

11. Is there any and what distinction between a judgment in an action of assumpsit and an action of debt?

12. What is the usual mode of meeting a defective pleading? and is it available to either party?

13. When is a cause at issue? and can there be more than one issue in a cause?

14. If a plaintiff resides abroad, or out of the jurisdiction of the Court, what should the defendant do, and can he do it in any stage of the cause?

15. Is there any difference between a verdict for a defendant and a nonsuit?

16. What is the meaning of a judgment *non obstante veredicto*? how is it to be obtained? and what effect has it on the costs of the action?

17. What is a feigned issue? in what cases is it resorted to? and by what authority is it framed?

18. Is there any difference in the proceedings after a verdict on a feigned issue and a real issue as to enforcing the decision?

19. If at a trial a juror be withdrawn, what effect has it upon the costs of the cause?

III. CONVEYANCING.

20. What is the distinction between uses and trusts?

21. What is a chattel real?

22. What are the rights of the husband in the chattels real of his wife?

23. What is understood by "uses in strict settlement?" and state an instance of such uses.

24. What is the difference between a lease for the life of the lessee, and a lease for 99 years, if the lessee shall so long live?

25. What difference is there between the liability of the lessee and the liability of an assignee of the lessee, in regard to breaches of covenant?

26. How does such liability of the assignee of the lessee differ from the liability of the lessee's executor?

27. In what case is a lease for years, made by a tenant for life, binding on those in remainder after his death?

28. What length of title is it the practice to require on behalf of a purchaser of a freehold estate?

29. What is the usual mode of verifying a pedigree?

30. When does a judgment at law become a charge on real estate?

31. Should any, and what search, and where, be made for any and what incumbrances against a vendor of real estate?

32. What formalities are now required for the valid execution of a will of real estate?

33. What powers should be given to the trustees of a will of real estate directing sales

and declaring trusts of the proceeds that may last many years?

34. What is requisite to make effectual the deed of a married woman not relating to her separate estate?

IV. EQUITY AND PRACTICE OF THE COURTS.

35. Can a married woman effectually dispose of property to which she will become entitled upon the happening of a future event?

36. If a person has been appointed a trustee without his consent, and has not acted and is not desirous to act, and a bill is filed against him, what defence should he make?

37. If a woman after marriage becomes entitled to a legacy not given to her separate use, can her husband insist upon its being paid to him, although she wishes to have some provision out of it for her separate use?

38. A lessee is under covenant to insure against fire, in the joint names of himself and his lessor, and the lease contains a condition of re-entry in case of breach of any covenant in it; the lessee insures in his own name only, and the lessor commences an action of ejectment for the breach of covenant. Will a Court of Equity give any and what relief to the lessee?

39. A party entitled under a devise to real estate in remainder, after the death of another who is in possession, is apprehensive that the validity of the devise may be questioned at law, on the death of the party in possession, and that the witnesses to prove the validity of the devise may then be dead. Will a Court of Equity give him any assistance, and in what manner?

40. A party entitled to stock, standing in the name of trustees, is afraid that it may be misapplied: what is the most speedy and summary mode of preventing the transfer? and under what statute is the remedy given?

41. A testator devises his real estate to A. and B., with power of sale, and of giving discharges for the proceeds of sale, upon trust to pay a legacy of 5,000*l.* to C., to pay an annuity of 30*l.* to D. for life, and an annuity of 500*l.* to E. for life, and to pay the rest of the income to F. for life, and at the death of F. to convey the residue to G. and H. in equal shares: X. is his heir-at-law; G. files a bill for the administration of the trust under the direction of the Court. Who are the necessary parties to the suit?

42. In what cases ought the heir-at-law of a deceased person to be party to a suit for the administration of the estate of such person?

43. A party entitled to a fund in the hands of trustees, executes an assignment of it by way of security for money borrowed. Is anything, and what, besides the assignment, necessary for the effectual security of the lender?

44. An executor has advertised for creditors of his testator; has paid all debts of which he had notice, and those are by simple contract; and he has distributed the residue amongst the legatees without any decree having been made for the administration of the estate. After-

wards, a specialty creditor, of whose debt he had no notice or knowledge, files a bill for the administration of the estate. In taking the account, is the executor entitled, as against such specialty creditor, to take credit for the payments made to the simple contract creditors and to the legatees, or either and which of them?

45. Under the usual decree for the administration of an estate, is an executor or administrator entitled to retain a debt due to himself in preference to other creditors of equal degree?

46. What is the effect as against a creditor of a decree for the administration of the estate of his deceased debtor?

47. In a suit for the administration of an estate, one of two executors defendants dies pending the suit: is the suit thereby abated? and is it necessary to bring the representative of the deceased executor before the Court? and for what purpose?

48. In what cases does the Court of Chancery, upon granting an injunction, direct an issue to be tried in a Court of Law? and for what purpose is such issue generally directed?

49. What is the object and effect of inrolling a decree?

V. BANKRUPTCY AND PRACTICE OF THE COURTS.

50. Describe the mode of proceeding to obtain an adjudication in bankruptcy.

51. State the principal acts of bankruptcy on which a fiat can be maintained.

52. How can a trader be compelled to commit an act of bankruptcy?

53. Under what circumstances may an attorney or solicitor become liable to the Bankrupt Laws?

54. How and when can a bankrupt dispute the validity of the adjudication against him?

55. State the usual course of proceeding at the several public meetings under a fiat.

56. Can a trader take any and what steps to obtain a fiat against himself?

57. In what cases may articles of merchandise be sold without subjecting the vendor to the Bankrupt Laws?

58. Are members or subscribers of a trading company liable individually to be made bankrupt? and give the authority for your opinion.

59. What is the course of proceeding to obtain a fiat against a joint-stock company?

60. What is the law with respect to the property of third persons in the bankrupt's possession at the time of the fiat? State the general rule, and the exceptions if any.

61. Where a creditor holds a security legal or equitable, but which is insufficient to pay his debt, what steps must be taken in either case to prove for the deficiency?

62. What power have the assignees in regard to leasehold property held by the bankrupt which they deem of no value?

63. Can an assignee be a purchaser at a sale of the bankrupt's property in any and what circumstances?

64. State the circumstances which will con-

stitute a fraudulent preference to a creditor, and entitle the assignees to recover the effects transferred.

VI. CRIMINAL LAW AND PROCEEDINGS BEFORE MAGISTRATES.

65. Upon an indictment against an accessory either before or after the fact, is the record of the conviction of a principal received as conclusive evidence? or is the party indicted at liberty to controvert by other evidence the guilt of the principal?

66. What special facts are the jury bound to find, if upon a trial for treason, murder, or felony, they acquit on the ground of insanity?

67. In what cases is a defendant in misdemeanor entitled to traverse?

68. Can counts for distinct misdemeanors be included in the same indictment in any and what cases?

69. What is necessary in order to enable a prosecutor to give in evidence a former conviction? and how and at what period of the proceedings against a prisoner must it be proved?

70. Define the crime of burglary and the evidence necessary to sustain an indictment for burglary?

71. In what cases may the crime of burglary be now punished with death?

72. What is the evidence necessary to support an indictment against a bankrupt under the statute 6 G. 4, c. 16, for removing, concealing, or embezzling part of his estate, to the value of 10*l.* and upwards?

73. Can an indictment for forgery be maintained in a case where it is shown that no such person as that whose name appears upon the instrument exists?

74. State what are the necessary proofs to support an indictment for wilful and corrupt perjury?

75. What is subornation of perjury? and what are the necessary proofs to support an indictment for such an offence?

76. To what Court must an application for a criminal information be made? and what are the essential differences between proceedings by criminal information and by indictment?

77. How many persons must be concerned in the commission of the offence in order to support an indictment for a conspiracy?

78. Can an indictment for conspiracy be supported against a husband and wife only? and give the reasons for your answer.

79. Can an indictment for conspiracy be supported although the object for which it was entered into be not effected?

RESULT OF THE EXAMINATION.

At the Examination, which took place on Tuesday, the 5th instant, 90 of the Candidates who were entitled to attend were present in due time. One only was absent. We are concerned to state that the Examiners felt it their duty to postpone no less than twenty. The number passed was only 70. It will be seen, therefore, that the statements in the newspapers of the increase of the Profession are much exaggerated.

RECENT DECISIONS IN THE SUPERIOR COURTS.

AND SHORT NOTES OF CASES.

Lord Chancellor.

In re Austies, Lunatics. April 25, 1849.

COMMISSION IN LUNACY.—CARRIAGE BY STRANGER.

*A commission de lunaticis inquirendis was granted to a stranger where the relatives had, as it appeared, only presented their petition afterwards, and for the purpose of defeating the former one, and where the sum allowed was only 110*l.* each out of an annuity of 350*l.* each, the balance going to form a fund to be divided amongst the relatives.*

A PETITION was presented by William Bailey, secretary of the Alleged Lunatics' Friends Society, and prayed that a commission might issue *de lunaticis inquirendis*. Another petition had also been presented by the lunatics' brothers for the same purpose. It appeared that the lunatics' father, a tobacconist of Devizes, had placed them in the Fishponds' Asylum near Bristol, the one forty and the other thirty years back, and died worth 100,000*l.*, leaving nine children, and that each of the two lunatics were entitled to about 11,000*l.* Benjamin Austie, one of the brothers, then looked after the lunatics until his death in 1843, when the trustees reduced their allowance from 180*l.* to 110*l.* The affidavits stated, that the lunatics had been removed to that part of the asylum allotted to third class inmates as regarded social position, payment and comforts, and that they had been entirely neglected by their relatives, confined with the lowest order of patients, never taken out for exercise, and were altogether kept in a most pitiable state. The accumulations from the lunatics' incomes amounted to upwards of 30,000*l.* of which a part, namely, 9,000*l.* had been divided amongst the brothers and sisters of the lunatics.

Malins and Joliffe, for Mr. Bailey, urged that the commission ought to be granted to their client, with a view to place the lunatics' affairs into different hands, and that the petition of the brothers should be dismissed with costs.

Roll and Follett for the next of kin, and second petition, urged that the commission, ought to be granted to the next of kin, and that the only instance of entrusting it to a stranger was *In re Smith*, 1 Russ. 348, decided by Lord Eldon, in 1826, when it was issued to a stranger, on the ground of the gross ill-treatment by his own relatives, but in that case the lunatic was not in a public asylum. See also *Esparte Tomlinson*, 1 V. & B. 57; and *Esparte Le Heup*, 18 Ves. 221.

Makins referred to *esparte Ogle*, 15 Ves. 112.

The Lord Chancellor said, the only question before him was, as to the carriage of the commission. One of the petitioners, Mr. Bailey, was a stranger, and the fact that he was secretary to a society for the protection of lunatics did not affect his claim to be entrusted to the carriage. This petition was presented last Feb., and that of the next of kin was not presented till March. It therefore might be presumed, that

if Mr. Bailey had not petitioned, they would not have presented their petition, or else why had they not done so years ago, and that the one they now presented was with a view to defeat the other. Upon that point alone Mr. Bailey was entitled to a preference. It appeared that the next of kin had reduced the lunatics' allowance at a time when by their infirmities they required better attendance and greater comforts, and that too when the lunatics' property was sufficient to meet the expense of extra attendance, &c. That relations were at liberty to reduce the allowance of a lunatic, for the purpose of making a fund to be divided amongst them, was a most dangerous doctrine, and would tend to every possible injustice. The relatives, therefore, were not entitled to the carriage of the commission, but it would be entrusted to Mr. Bailey, and the other petition would be dismissed with costs.

Rolls Court.

Oldfield v. Cobbett. May 22, 1849.

SETTING ASIDE SUBPÆNA.—COSTS OF FORMER APPLICATION.

Application to set aside subpoena to enforce payment of costs, refused on the ground that the costs occasioned by former applications for a similar purpose had not been paid.

THIS was an application to set aside a writ of subpoena which had been issued by the plaintiff to enforce the payment of 4*l.* 3*s.* 9*d.* for costs, and to discharge the defendant from custody under an attachment relating to the same. It appeared that the costs of a former application made for the same purpose, which had failed, had not been paid. The Lord Chancellor, on a similar application, had refused to interfere, a like objection having been made.

Green in support of the application; *Turner* contra.

The Master of the Rolls said, that as the costs of the former applications for a similar purpose had not been paid, the application would be refused.

May 31.—*Attorney General v. Corporation of London*—Stand over to June 7.

—31.—*Oldfield v. Cobbett*—Motion to discharge from custody refused with costs.

—30, 31, June 1.—*Sturge v. Sturge*—Cur. ad. vult.

—2, 4, 5.—*Gossett v. Vivian and others*—Cur. ad. vult.

—5.—*Attorney-General v. Wiggeston's Hospital*—Part heard.

Vice-Chancellor of England.

Wright v. Warren. April 27, 1849.

ADMINISTRATION.—CONSTRUCTION OF WILL.—ANNUITY TO WIDOW.

Upon construction of will, held, that the widow was only entitled to an annuity left her, and not to the income of the residuary estate.

THIS suit was instituted to administer the estate of the late Mr. Warren, who by his will

bequeathed an annuity of 1,000*l.* to his wife for her life, or so long as she continued his widow; and if she married again, it was to be reduced to 100*l.* He also bequeathed certain shares in the Great Western Railway, the London and Westminster Bank, and the Chartered Gas Company, together with a sum of 4,000*l.* to his eldest son on attaining 21. The testator then directed that, at the death of his wife, the whole of his remaining property was to be computed, and, after paying the legacies, divided among his children in certain proportions as they completed their majority. The Master had found the general residue of the estate to amount to 54,000*l.*, the income of which the widow claimed.

Bethell and *Goodene* for the widow; *Stuart* and *De Gez* for the younger children; *Kenyon*, *Parker*, and *Collins* for the eldest son, contended that the question as to whether the widow ought to have the benefit of the dividends on the shares and pay the calls, could not be decided until the son was of age.

The *Vice-Chancellor* said, that the widow was only entitled to the annuity of 1,000*l.*, and with reference to the shares directed an inquiry as to whether or not the testator was an original shareholder.

June 1.—*Exparte Broadhurst*—Order for payment out of Court of purchase-money for land taken by railway company.

— 1.—*Arcoedekne v. Lord Huntingfield*—Order for payment of money in Court to plaintiff.

May 31, June 1, 2.—*Grand Junction Canal Company v. Dimes*—Injunction restraining proceedings in actions—Application for committal for breach of injunction refused.

June 4.—*Holmes v. Crisp*—Judgment on construction of will.

— 4.—*Drever v. Maudesley*—Part heard.

Vice-Chancellor Knight Bruce.

Exparte Stewart, in re Charles Stewart; Sloper, respondent. May 2, 1849.

ANNULLING FIAT.—TRADER UNDER 6 G. 4, c. 16.

Held, that the buying and taking leases of land and building houses thereon is not a trading within the meaning of the 6 G. 4, c. 16; and a fiat issued against a person so acting annulled.

THIS was a petition presented by a barrister to have the fiat against him as a builder annulled, on the ground that he was not a trader. It appeared that he had bought or leased land at *Shepherd's Bush* and other places, and built houses thereon, some of which had been sold. The Court had, on a former hearing, directed an action of trover to be brought at the *Kingston Assizes*, (reported *ante*, vol. 37, p. 434). The alleged bankrupt had succeeded in the action so brought, and an application for a new trial had likewise been refused.

Russell, *Tripp*, and *Bramwell* for the alleged bankrupt, contended that the fiat might be annulled with costs against the petitioning creditor.

Swanston and *Bacon* for the assignees and petitioning creditor, urged that the assignees had been deprived of laying material evidence before the jury on account of the bankrupt's books not being accessible before the day of trial; and that costs ought not to be inflicted, or should at any rate be set-off against a debt due to the petitioning creditor, citing *In re Edwards*, 1 Mont., Deac., & De G. 3; and *Exparte Neirinckx*, 3 Mont. & Ayr. 384.

The *Vice-Chancellor* said, that the additional evidence which might have been obtained if the bankrupt's books had been fully available at the trial and now produced, would not have made a difference in the answers of the jury to the questions put, which answers he ought to consider as being correct in fact. The fiat issued, therefore, against the petitioner was bad at law, and must be annulled, as he was not a builder under the 6 G. 4, c. 16. No costs up to the date of directions for a trial—those since in this Court to be paid by the petitioning creditor.

May 30.—*Exparte Bolckow, in re Maclean*—Claim to be entered for amount of bills and of damage to be ascertained by the Commissioner.

— 30.—*Exparte Partridge, in re Cross*—Proof allowed on bills to extent of damage to be ascertained by one of Commissioners.

— 31.—*Fletcher v. Raven, Fletcher v. Bishop of Peterborough*—Reference as to title in property—Injunction restraining waste in meantime.

June 1.—*In re Bridgwater and Minehead Junction Railway Company*—Order for winding-up company.

— 1.—*In re London and Bristol and South Wales Direct Railway Company*—Stand over, the directors undertaking to indemnify petitioner, and to allow inspection of accounts and share list.

— 1.—*In re Great Munster Railway Company*—Stand over.

May 30, June 1, 2.—*Rogers v. Price*—Injunction restraining waste.

June 1, 2.—*Prince Albert v. Strange, Attorney-General v. Strange*—Judgment for the plaintiff.

— 4.—*In re Cameron's Steam, Coal, and Swansea and Loughor Railway Company*—Stand over.

— 5.—*Evamy v. Jones*—Bill dismissed with costs.

— 5.—*May v. Grave*—Part heard.

Vice-Chancellor Wigram.

Adams and another v. The London and Blackwall Railway Company. April 30, May 2, 5, 1849.

LANDS' CLAUSES' CONSOLIDATION ACT.—CONSTRUCTION.

Where a railway company entered on land under the 85th section of 8 Vict. c. 18, making a deposit by way of security and giving a bond, held, that the owners of the property so taken or injuriously affected,

were entitled under the 68th section to have their claim settled either by arbitration or by verdict of a jury, as they should think fit.

In November, 1847, the defendants served a notice upon the plaintiffs, who were owners and lessees of some leasehold property, that a portion thereof would be required for the purposes of the railway. An agreement was afterwards made as to the compensation to be paid for the respective interests of the plaintiffs and their lessors in the premises. The company then commenced a negotiation for the purchase of the remainder of the premises, but without coming to any arrangement. Whereupon they proceeded under the 8 Vict. c. 18, s. 85, and caused the value of the plaintiffs' interest in the premises to be ascertained, and paid the amount into the bank, giving the bond required, and entered on the premises and commenced the works. The plaintiffs, having waived the benefit of the agreement, then served a notice for the company to issue their warrant for summoning a jury to assess the value; and upon their refusal this bill was filed, praying that the company might be compelled to complete the purchase, and take the necessary proceedings under the 8 Vict. c. 18, to assess the value, and that such value might be paid to the plaintiffs. The company demurred to the bill,—1st, on the general ground of want of jurisdiction, as the proper remedy was by *mandamus*; and 2ndly, that the plaintiffs ought to have made some definite claim before the company could be required to summon the jury. The 68th section of the 8 Vict. c. 18, enacts, that "if any party shall be entitled to any compensation in respect of any lands, or of any interest therein, which shall have been taken for, or injuriously affected by, the execution of the works, and for which the promoters of the undertaking shall not have made satisfaction under the provisions of this or the special act," &c., "such party may have the same settled either by arbitration or by verdict of a jury, as he shall think fit."

Wood and Bigg for the defendants, in support of the demurrer; the *Solicitor-General* and *J. H. Law*, contra.

The *Vice-Chancellor* said, that the demurrer could not be sustained on the second ground, as by the 68th section the onus of proceeding to assess the damage was thrown on the company, wherever the company took possession of, or injuriously affected, property. The circumstance that the plaintiffs were entitled to proceed under the 68th section did not relieve the company from the obligation. With reference to the question of jurisdiction, the act had not specified a remedy though it had given a right, and where that was so, the decision of *Walker v Eastern Counties Rail. Co.*, 6 Har., 594, went to show that parties were entitled to a remedy at law or in equity in the same way as in cases of a similar kind, unaffected by an act of parliament. If, after notice given to take the land and tendering the price, the landowner took any steps to injure

or alter the character of the property, or refused to execute the conveyance which the act required, this Court would interfere on behalf of the company to protect the property, and compel specific performance of the contract. In all cases the Court acts on the ground that the remedy, if it exists at all, ought to be mutual and reciprocal as well for the vendor as for the purchaser. Upon this principle, the Court would assist a vendor, without proving a special case, to recover his purchase-money, although such relief being merely in the nature of compensation in damages or value, was adequately provided for at law. The plaintiffs were therefore entitled to the decree prayed, and the demurrer must be overruled with costs.

May 30.—*Marshall v. Sladden*—*Cur. ad. vult.*

— 30.—*Lassence v. Lascher*—Stand over to June 8.

June 1.—*Long v. Eastern Union Railway Company*—Stand over.

— 2.—*O'Reilly v. Alderson*—Injunction restraining transfer to new trustees until hearing.

— 2.—*In re the Manchester and Leeds Railway Company*—Order for investment of purchase-money of land.

June 2, 4, 5.—*Waring v. Manchester, Sheffield, and Lincolnshire Railway Company*—*Cur. ad. vult.*

Queen's Bench.

(Before the Four Judges.)

Keymer v. Laurie and others. April 18, May 3, 1849.

NEW TRIAL.—MISDIRECTION.—DISHONOUR OF BILL.

Held, upon application for new trial on the ground of misdirection, that the making a bill payable at a banker's, was sufficient authority to honour it, and that the acceptor ought to have given notice not to pay the bill if he had so intended.

THIS action was brought against the defendants, as trustees of the London Joint-Stock Bank, for refusing to honour a cheque for 7l. 11s., drawn on the bank by the plaintiff, who had an account there. The plaintiff had accepted a bill for 42l., payable at the defendants' bank, and it was accordingly paid on being presented, although the defendant had only 21l. 4s. of the plaintiff's monies in their hands. A further cheque for 13l. 13s. was also paid, but the cheque for 7l. 11s. drawn for the balance was dishonoured. At the trial at the sittings after Hilary Term, Lord Denman directed the jury, that the circumstance of the plaintiff's having made the bill payable at the defendant's bank, was an authority to them to pay it; whereupon the defendants obtained a verdict. An application was made for a rule nisi to set aside the verdict, and for a new trial on the ground of misdirection.

Crowder, Q. C., in support of the rule.

The Court, after taking time to consider, held, that there had been no misdirection, as the plaintiff, if he wished the defendant not to pay the bill, ought to have given notice to the defendant not to do so, and refused the rule.

May 30.—*Regina v. Commissioners of Woods and Forests, ex parte Budge*—Cur. ad. vult.

— 31.—*Ex parte Ross, in re the Great Western Railway Company*—Rule nisi for mandamus to produce books to bondholder for inspection.

— 31.—*Page v. Moore*—Rule nisi to set aside verdict and for new trial.

— 31.—*Regina v. Bythersee and another*—Rule nisi for summons to officer of union to pay expenses of lunatic pauper.

— 31.—*Evans v. Lund and another*—Rule nisi for stay of proceedings until plaintiff gave security for costs.

— 31.—*Regina v. Sutcliffe and another*—Cur. ad. vult.

— 31.—*Regina v. Surveyors of Highways*—Rule for mandamus to compel making highway refused.

— 31.—*Rumbalow v. Whalley*—Rule absolute to set aside award.

— 31.—*Causeley v. Hon. E. Perry*—Rule staying proceedings until costs of former action paid.

June 1.—*Doe dem. Regina v. Archbishop of York*—Cur. ad. vult.

— 2.—*Smith v. Reginam*—Judgment affirmed.

— 4.—*Halkett v. Merchant Traders' Ship Assurance Association*—Cur. ad. vult.

— 4.—*Ex parte Bailey, in re Bailey and South Devon Railway Company v. Powell*—Rule nisi for mandamus on arbitrator to deliver his award refused.

— 5.—*Regina v. Newmarket Railway Company*—Cur. ad. vult.

— 5.—*Regina v. Parham*—Part heard.

— 5.—*Regina v. Dyer*—Cur. ad. vult.

Queen's Bench Practice Court.

(Coram Coleridge, J.)

Halkin v. Lord Talbot. April 19, 1849.

EXECUTION AGAINST SHAREHOLDER.

Rule nisi granted for execution against a shareholder of a company under the 7 & 8 Vict. c. 110, s. 68.

THIS was an application for a rule to show cause why execution should not issue under the stat. 7 & 8 Vict. c. 110, s. 68, against the goods of Lord Talbot as a shareholder in the Merchant Traders' Ship Insurance Company. The plaintiff had brought an action on a policy of insurance entered into by the company, and had recovered a verdict against the defendant, a fiat in bankruptcy having issued against the company. It appeared that the association had been started with a limited capital, and had never been in a very flourishing condition, and that their liabilities amounted to 60,000*l.*, and the available assets to 8,000*l.* The 7 & 8 Vict. c. 110, s. 68, enacts that, "in the cases pro-

vided by this act, for execution against the person or property of a shareholder, such execution may be issued by leave of the Court, or a judge of the Court, upon motion or summons for a rule to show cause, or other motion consistent with the practice of the Court; and such Court or judge may make absolute, or discharge such rule, or allow or dismiss the motion, and direct the costs of the application as may be thought fit."

Sir F. Theiger, in support of the rule, contended that the plaintiff might proceed against an individual shareholder, provided the debt had been proved under the fiat and no receiver appointed.

The Court granted a rule nisi.

May 31.—*Ex parte Harrison, in re Lincoln Waterworks Company*—Rule nisi to quash certiorari.

— 31.—*Anon, Ex parte Morse*—Rule nisi on attorney to deliver over an account of deeds held, and to pay over all monies received.

June 4.—*Ferris v. Curzon, clerk*—Stand over until action on bill of exchange tried—Rule nisi to be in meantime enlarged and all proceedings stayed.

— 5.—*In re Triston*—Part heard.

Court of Common Pleas.

Keighley v. Gardiner. May 24, 1849.

ATTORNEY'S COSTS IN COUNTY COURT.—TAXATION.

Rule nisi granted for reviewal of taxation, on the ground of the disallowance of certain costs incurred prior to the defendant's reducing his claim so as to bring it within the 9 & 10 Vict. c. 95.

THIS was an application for a rule calling on the defendant to show cause why the Master's taxation should not be reviewed on the ground that certain costs had been improperly disallowed. The plaintiff was an attorney, and had transacted various business for the defendant, his client, in respect of which the plaintiff delivered two bills of costs, —one for 73*l.* 9*s.* 2*d.*, and the other for 20*l.* 19*s.* 2*d.* The latter bill referred to the prosecuting a plaint in the County Court of Edmonton, and also to preliminary matters before the defendant determined to proceed therein. Under orders to tax the bills, the sum of 9*l.* 6*s.* 6*d.* was taxed off the first bill, and the whole of the second, excepting 15*s.*, taxed off under the 9 & 10 Vict. c. 95, s. 91, which enacts, that "no attorney shall be entitled to have or recover therefor any sum of money, unless the debt or damage claimed shall be more than 40*s.*, or to have or recover more than 10*s.* for his fees and costs, unless the debt or damage claimed shall be more than 5*l.*, or more than 15*s.* in any case within the summary jurisdiction given by this act." The defendant tendered the amount of the two bills minus the deductions so made by the Master, and the costs of taxation which the plaintiff

incurred under 6 & 7 Vict. c. 73, s. 37, as a sixth part had been taxed off. The plaintiff refused to receive the amount. It was stated by the affidavit that certain items of the second bill were charged for business done respecting the subject-matter of the plaint in the County Court before the defendant had determined to proceed under the 9 & 10 Vict. c. 95. It was also sworn that certain other items referred to costs in prosecuting the plaint at Edmonton, and that such costs had been allowed to, and received by the defendant as costs in the suit.

Joseph Brown in support of the application. The Court granted a rule nisi.

May 30.—*Wood v. Company of Copper Miners of England*—Judgment for the plaintiff on demurrer to declaration—Verdict, by consent for plaintiff, with nominal damages—Each party to pay his own costs.

—31.—*Jones and another v. Broadhurst*—Cur. ad. vult.

—31.—*Richardson v. Borne*—Rule absolute to enter verdict for plaintiff.

June 1.—*Devaux and another v. Conolly and another*—Cur. ad. vult.

—1.—*Peterson v. Davies*—Judgment for plaintiff on suggestion to deprive of costs.

—2.—*Berwick v. Capper*—Rule nisi for prohibition to restrain proceeding to execution on judgment obtained.

—4.—*Dunn v. Loftus*—Rule absolute that defendant should be at liberty to plead his discharge under the Insolvent Debtors' Act, without the affidavit that the subject-matter of plea arose within eight days from the date of application.

—4.—*Pennell and another, assignees v. Stevens*—Rule absolute for new trial.

—5.—*Groome and another v. Watson*—Cur. ad. vult.

Court of Exchequer.

In re the Satirist Newspaper. May 4, 1849.

LIBEL.—PROCEEDING AGAINST SURETIES.

Rule nisi discharged with costs to proceed against the sureties of printer and publisher of newspaper; the proper remedy to set the 11 G. 4, and 1 W. 4, c. 73, in motion being by information on the part of the Crown.

A RULE had been obtained by the Duke of Brunswick, calling on the sureties of the printer and publisher of the Satirist newspaper to show cause why he should not be at liberty to proceed against them under the 11 G. 4, and 1 W. 4, c. 73, s. 4. The Duke of Brunswick had obtained a verdict and judgment against the newspaper for a malicious libel, and there being no property available to satisfy the judgment, sought to make the sureties responsible. The 11 G. 4, and 1 W. 4, c. 73, s. 4, enacts, that "if any plaintiff in any action for libel against any editor, conductor, or proprietor of such newspaper, pamphlet, or other paper as aforesaid, shall make it appear by affidavit to his Majesty's Court of Ex-

chequer, that he is entitled to have execution against the defendant upon any judgment in such action, but that he has not been able to procure satisfaction by writ of execution against the goods and chattels of such defendant, it shall be lawful for the said Court, for the benefit of such plaintiff, to order and direct such proceedings to be had and taken upon such recognizances or bonds respectively as would be taken to obtain any fines or penalties due to his Majesty secured by such recognizance and bond."

Knowles, against the rule, contended that the proceedings were altogether erroneous, and that the only mode of enforcing the statute was by information by the Attorney-General, as the bond was to the Crown.

The Attorney-General, (*amicus curiæ*), suggested that this proceeding seemed to be an attempt on the plaintiff's part to discharge the function of the representative of the Crown.

Snow in support of the rule.

The Court said, that though there might have been an omission in the statute, they could not rectify it. The Court had no power to proceed against the defendant in the manner suggested by the rule, as he was neither "editor, conductor, nor proprietor." The rule therefore must be discharged, with costs.

May 30.—*Ness v. Armstrong*—Rule absolute to enter nonsuit, on the ground that the proceeding by *sci. fa.* was not maintainable.

June 1.—*Merchant Seamen's Hospital Society v. Mayor, &c. of Liverpool*—Stand over.

—1.—*Teschmøzer v. Renshaw*—The parties elected to make this a special verdict.

—1.—*Hamilton and wife v. Spottiswoode*—Cur. ad. vult.

—2.—*Ford v. Elliott*—Rule absolute for new trial.

—2, 4.—*Wakley, jun. v. Healey and others*—Rule absolute for new trial.

—4.—*Cobbett v. Sir G. Grey*—Part heard.

—4.—*Vallee and others v. Dumergue*—Cur. ad. vult.

—5.—*Boosey v. Purday*—Rule absolute to enter verdict for defendant.

Exchequer Chamber.

June 2.—*Regina v. Chapman*—Conviction affirmed.

—2.—*Regina v. Harris*—Adjourned *sine die*.

—2.—*Regina v. Brisby*—Conviction affirmed.

—2.—*Regina v. Cooper*—Conviction held bad.

—2.—*Regina v. Appleton*—Stand over.

Nisi Prius.

(Coram Platt, B.)

Cherry v. Heming and Needham. May 11, 1849.

DEED OF SALE OF PATENT.—DELIVERY.

Semble, that where a deed had been formally

delivered, it was of no moment that the signature had not been affixed, as that was not necessary to give effect to a deed.

THIS action was brought to recover certain instalments due from the defendants under a deed, alleged to have been made by them on the purchase of a patent taken out by the plaintiff's late husband. They pleaded *non est factum*. On production of the deed, the signature of Needham was affixed as well as the attestation to the same and to the delivery, but there was no signature attached to the seal set apart for Heming, nor any attestation of delivery by him. The deed, however, came from the custody of Heming.

Watson, Cowling, and T. Jones, for the plaintiff, contended, that the deed had been formally delivered by Heming, producing a written

notice served on the plaintiff from both the defendants, in which the deed was referred to as an indenture between themselves of the one part and the plaintiff of the other.

Knowles and Bramwell for Heming urged, that the execution of a deed could not be assumed in the absence of direct affirmative evidence of the execution.

The Court said, that the signature of the defendant to the deed was not necessary to give effect to a deed where there had been a delivery. The question for the jury, therefore, was whether from the evidence they might or might not conclude that Heming had delivered the instrument as his act and deed.

A verdict was thereupon returned for the plaintiff for the balance due on the purchase of the patent.

BUSINESS OF THE COURTS.

COMMON LAW SITTINGS.

Queen's Bench.

June 4, 1849.

THIS Court will, on Wednesday the 13th day of June, inst., and two following days, and on Wednesday the 20th, and three following days, hold Sittings, and will proceed in disposing of the business in the Crown Paper, the Special Paper, and New Trial Paper, and will also hold a Sitting on Thursday the 5th day of July next, and give judgment in cases previously argued.

Exchequer of Pleas.

THIS Court will hold Sittings on Saturday the 16th day of June inst., and on every succeeding day, (Sundays excepted), until and including Tuesday the 26th day of June inst., and also on Friday the 6th day of July next, and will at such Sittings proceed in disposing of the business then pending in the Paper of New Trials, in the Paper of Special Cases, and in the Paper of Demurrers, and in disposing of the Motions and Applications which shall then have been made and shall be then pending, and in giving judgment in all Cases then standing for judgment.

NISI PRIUS CAUSE LISTS.

REMANETS FROM THE SITTINGS AFTER TRINITY TERM, 1849.

Common Pleas.

Middlesex.

(For the Queen's Bench List see page 94, ante.)

J. Duncan	Stead	S. J. Williams	Ca. Holgson and B.
Melton	Fearn	S. J. Countess Waldegrave	Prom. Pearson
Edwards and R.	West Cornwall Railway Company, Inj.	S. J. Enthoren	
Marten and Co.	Doe d. Mills and ors.	S. J. Samuda and another	Dr. Crowder and Co.
Same	Same	S. J. Same	Eject. Tucker and S.
Same	Same	S. J. Pratt and others	Eject. Same [& Co.
Same	Same	S. J. Samuda and others	Eject. { Symes, Weston, { Tucker and S.
Same	Same	S. J. Samuda and another	Eject. { Tucker and S. { Carpenter & W.
Same	Same	S. J. Same	Eject. Tucker and S.
Same	Same	S. J. Same	Eject. Same
Same	Same	S. J. Same	Eject. Same
Same	Same	S. J. Same	Eject. Same
Davies, Son, and C.	Walker	S. J. Ford	Ca. G. S. Ford
Same	Parker and another	S. J. Parney	Cov. A. Haynes
J. H. Clayton	Hargrave	S. J. Hargrave	Prom. W. & R. B. Baker
Jaquet	Ellis	S. J. Cowne and another	Ca. Hamer
Bebb	Cloessman	S. J. White	Drue. Surr and Gribble
Ivimey	Hoare	S. J. Overbury	Ca. Tate
Minet and Smith	Gauntlett	S. J. Whitworth and another	Ca. Watkins and H.
G. J. Shaw	Shaw	S. J. Wright	Prom. Pearce, P. and W.
Walsh	Slade	S. J. Williams and another	Iss. Pain and Hatherly
Rae and Brown	M'Gregor	S. J. Bainbridge	Iss. J. G. Lander
Clarke, F. and F.	Knapp	Simpson	Prom. Jaquet
Watson and Sons	Bennett	S. J. Fitzgerald	Prom. Bevan and G.

Braham
Hird and Son
G. G. Vincent
Garborough and W.
Y. and C. Kempson
J. Harris
Same
Pain and Hathenly
Pittman
Burgoyne and Co.
T. Willis

Shaw
Doed, Martin and ors.
Job
The Banwen Iron Co. S. J.
Vanden Houten
Skey, extrix., &c.
Skey
Bloxam
J. Basterfield
Doe d. Collett
Spear
S. J. Jones
S. J. Holloway
Harton
Robinson
Mallan
Skey
Skey
S. J. Harvey
S. Towler, Admix.
Ward
Ward

Ca. Colley
Eject, Gatty and Howard
Dtus. Fitch
Covt. Maltby and Co.
Dt. O. Richards
Prom. G. J. Lloyd
Prom. Same
Prom. Campbell & Witty
Prom. Smith
Eject. Parsons
Dt. J. F. Elmslie

Court of Exchequer.

Middlesex.

G. Smith
Bridges and Co.

Doe d. Smith
Westminster Improvement
Commissioners

Hoare and others

Tres. & Eject, T. Weston

Hornidge
W. White

Prosser
Maguire

Fuller
Lee Warner
Killarney and Valentin
Railway

Pro. Fuller and S.
Trov. Cook

T. Philpot, jun.
Slee and Robinson
T. W. Gray

Vickers
Williams

S. J. Birch
Thomas

Dt. Elmslie and B.
Ca. In person
Dt. W. C. Gates

Ambergate, Nottingham,
and Boston and Eastern
Junction Railway

S. J. Brandon

Dt. E. J. Sydney
Dt. Overton and H.
Dt. Reed and Co.
Dt. H. Ashley
Pro. Gedge
Ca. R. C. Barton
Pro. Johnston and Co.

Same
Same
Same

Same
Same
Same

Railton
Heather
Heaton

A. M'A. Low
J. H. Vaughan
Trail
T. W. Gray

Matthews
Bryan
Smith

S. J. Thorn
Ritchie
S. J. Fitzmaurice

Ambergate, Nottingham,
and Boston, and Eastern
Junction Railway

Mitchell

Dt. C. Lewis
Ca. Fyson and Co.
Trov. Scott and C.
Dt. Harbyn and Co.
Ca. Lefroy
Dt. Rushworths
Pro. Bicknell
Tress. H. Knight
Dt. Hodgson and B.
Covt. Clarke and D.
Dt. Lewis
Pro. Horsley
Pro. Beavor and Co.
Ca. Dimmock and B.
Dt. Oldershaw
Ca. Lawrance and P.
Dt. In person
Pro. Younghusband

Watkins and H.
Lonsdale
S. Neal
Wright and Co.
G. P. Wilton
T. Lewis
Phillips and V.
E. Elkins
Wright and Co.
Young and H.
Dodd and Co.
Parker and Co.
C. Barnard
Jones and Co.
A. Wilson
Wiglesworth
G. H. Lewin

Dalton
White
Yeoman
Batey
Jackson
Gomm
Jay
Prescott
Woodfall
Stratton
Sims and ors.
Fowler
Murch, (pauper)
Trant
Warwick and anor.
Wood
Dabourg

S. J. Leavesley and another
Child
Holdsworth
S. J. Watson and others
Bowen
Bicknell
Crick
S. J. Mahon
Hansard
Wilson
S. J. Brutton and another
S. J. Drake, Clerk, &c.
Gurney
Ponsford
S. J. Gill and others
Harwood
S. J. Lord Ingestre

Queen's Bench.

REMANETS FROM THE SITTINGS AFTER TRINITY TERM, 1849.

London.

D. Richardson
Capes and S.

Mackay (Inj.)
Blackmore (Inj.)

Brooke
Burton and others, execu-
tors, &c.

Tres. Baxendale and Co.

Keene
Vineat and S.

Dean (Inj.) S. J.
Franklin & another (stay-
ed)

Grace
S. J. Davis and others

Dt. Alban and B.
Dt. Smith

Lewis and L.
W. H. Green
Phillips
Pearce and Co.
C. B. Wilson
Jordeson

Brand (stayed)
Bond (Inj.) S. J.
Hartley & another (stayed)
Robertson (stayed)
Gibbs (stayed)
Candell (stayed)

Harper
Stanley
Manton
S. J. Dargan
Aberdeen
Harrison and others

Covt. Wm. Bevan
Pro. Few and Co.
Prom. Few and Co.
Van Sandau & Co.
Covt. Norris and Sen
Covt. Gilbert, Hook, & Co.
Pro. Chester and Co.

Hook	Conyngham, Esq., and others	S. J. Macgregor	Pro. Tilleard and Co.
Warter	Sherlock and another	S. J. Brown	Pro. Campbell
Starling	Newman (Inj.)	Parry	Hughes, K. and M.
R. and W. G. Roy	Walker	S. J. Satterthwaite	Pro. Vizard and Co.
Cox and Co.	Jagon	Long	Dt. Hartley
R. and W. G. Roy	Harvey, (P. O.)	S. J. Brooke	Sci. Fa. Van Sandau & Co.
Linklater	King	Liquorish	Howell
Sewell and F.	Nickola	S. J. Kemptou	Dt. Wire and Co.
Reyoux and B.	Roberts and others	S. J. Allan	Dt. Van Sandau and Co.
Sewell and F.	Elliott	S. J. Lewis	Pro. Wilkinson and Co.
Lawrence and Co.	Gurney and others	S. J. Smith and another	Pro. Napier and Co.
Watson and Co.	Hooper	S. J. Leaf	Dt. H. Lloyd
Baker and Co.	Barry	S. J. Hill	Pro. Gregory and Co.
R. and W. G. Roy	Shrewsbury and Birmingham Rail. Co.	S. J. Hopkinson	Dt. S. Moores
Hodgson and B.	Nisbet	S. J. Oliveira	Pro. Fry and Co.
Same	Murray	S. J. Same	Pro. Same
Wm. Smith	Barford	S. J. The Legal and Commercial Fire Assurance Society	Covt. Brace and Co.
Harris (in person)	The Queen	S. J. Lloyd	Indt. Gates
R. K. Lane	Howard	S. J. Moore	Pro. Tilson and Co.
Jaques and Co.	Gavie	S. J. Shearman	Pro. In person
Fearon and Co.	Farratt	S. J. The Duke of Buckingham	Tres. Strutt
Wiglesworth and Co.	Goding	S. J. Sir John Hare	Pro. Davies, Son, and Co
Vardy	Wilson	S. J. Spurgeon	Pro. G. Bower
Few and Co.	North American Colonial Assn. of Ireland	S. J. Bentley	Dt. W. Lake
Lucena	Lucena	Clements	Pro. Hughes, K., and Co.
Dawes and Sons	Tucker, secy., &c.	S. J. Roberts and others	Pro. Reyroux and B.
Brandon	Lecomte	S. J. The Hon. Spencer Lyttelton	Pro. Walker and Co.
Blower and Co.	Foley	S. J. Reeves	Dt. Tatham and Co.
Macnamara	Macnamara	S. J. O'Connor	Dt. M. Turner
Tatham and Co.	Barker	S. J. Whitworth	Pro. Becke
Same	Same	S. J. Goddard	Pro. Graham
Newbon and E.	Rowlandson	S. J. Slade	Pro. Oliveron and Co.
Lacy and B.	Baily	S. J. Turner	Pro. Sharpe and Co.
Peterson and Son	Briant	S. J. Taylor	Tres. Newton
Sheppard and D.	Hanbury and another	S. J. Lighton	Dt. Bickley
Dalling	Bland	S. J. Joseph	Pro. A'Beckett and Co.
R. and W. G. Roy	Esdaile, (P. O.)	S. J. Allan	Pro. Simpson and Co.
J. H. F. Lewis	Harrison	Carter	Dt. Stringer
Long	Challen	Hummel and another	Fi. Pike
Tilson and Co.	Monteiro	Earl Talbot	Pro. Slader
Champion and Co.	Relden	Hailes	Pro. Dunn and W.
Beddome and W.	F. Parker	P. Parker	Dt. White, E., and W
Young and T.	Smith and another	Welch and another	Dt. Jerwood
Hoskins	Job	Job	Dt. Justice
Hughes, K. and M.	Bell and others, assignees, &c.	S. J. Kerr and others	Tro. Desborough and Co.
G. Clark	Hendrey	Lewis	Pro. Gregory and Co.
Lambert	Dresser	Gladstone and another	Pro. Chester and Co.
Ashley	Harvey, admor., &c.	Felton	Pro. Wallen
Hughes, K. and M.	Williams	Smallwood	Tres. Humphreys
Rowland and C.	Rowland, (P. O.)	Wolston	Pro. A. Wolston

Common Pleas.

London.

J. J. Blake	Soady	S. J. Mangles	Prom. Young
Linklaters	Hutton	Wiles	Trov. Howell
Wilson and H.	The Elec. Tel. Co.	S. J. Nott and others	Ca. Wickens
Same	Same	S. J. Gamble and others	Ca. Same
Same	Same	S. J. D. P. Gamble and others	Ca. Same
Cotterill	Humbro and another	S. J. Gurney	Prom. Pearce and Co.
Oliveron and Co.	Grant and others	S. J. Norway and others	Ca. Fyson and Co.
J. J. Blake	Stansfield and another, assignees	S. J. Staff	Tro. Holt and Aubin
A. Dobie	Adams	S. J. Peters	Prom. Hughes and Co.
P. J. Manning	Marns	S. J. Desborough, Sec., &c.	Prom. Browning
Emalie and P.	Connop and another	S. J. Daniel	Prom. Tyrrell

Oliverson and Co.	Christie, jun.	S. J. Trott and others	Ca. Hughes, K. and M.
Asburt	Burton and another	S. J. Wilson and others	Prom. Clark and G.
W. W. and R. Wren.	Callander	S. J. Gibson and another	Prom. R. Ellis
G. Rutherford	Grissell and another	S. J. James	Prom. Hook
Miller	Rouch and another	S. J. Grylls and others	Prom. J. & J. H. Linklater
Oliverson and Co.	Barry	S. J. Hill	Prom. Gregory and Co.
J. and J. H. Linklater	Davis and others, assignees	Scholey and another	Dt. Burnell
Phillips and V.	Dixon and others, assignees	S. J. Stansfield	Detue. Penfold
Oliverson and Co.	Arbuthnott & anor.	S. J. Sharp	Detue. Gregory, F., & Co
J. Towne	Cannan and another	S. J. Pratt	Trov. Hine & R.
J. & J. H. Linklater	Hutton and others	S. J. Monmouthshire Canal and Rail. Co.	Prom. White and Co.
A. Jones	Inge	S. J. Austin	Prom. Wing and Ducane
Wire and Child	Smith	S. J. Hamilton (Treasurer)	Covt. Gosling
Druce and Sons	Dickson	S. J. Zizinia and another	Prom. Oliverson and Co.
Oliverson and Co.	Barry	S. J. Simpson and others	Simpson
Finch and Shepherd	Williams	S. J. Maitland	Ca. G. Smith
Lander	Lawson and anr. (remt. after Trin. Term)	Dumlin	Buchanan
Philips and V.	Boyd	S. J. Thornton	Prom. R. Ellis
R. Cole	Loader	S. J. Gardiner	Prom. Rickards and W.
Kempson	Pritchard	S. J. Taylor	Cov. Walthew
S. Walters	Edwards and ors.	Parker	Ca. H. Walker
Gordon and Son	Hillcoat	S. J. Archbishops of Canterbury and York	Ca. Johnson, Son and W.
H. Lloyd	Burton and others	S. J. Penn	Hanrott and Son
Hook	Griffin and another	S. J. Baldwin	Prom. Bickley
J. & J. H. Linklater	Whitfield and another, assignees	S. J. Aland	Ca. Bavor & Co.
Same	Messer	S. J. Booth	Dt. Browning
Lofty, Potter, and Son.	Stanfield and another, assignees	Lemm	Iss. J. H. Jones
Maltby and Co.	Robinson and others	S. J. Rosetto and others	Prom. Oliverson and Co.
Young and Hancock	Gaskill	S. J. Bainbrigge	Dt. Hunt
Sharpe, F. and Co.	Turner and others, assignees	S. J. Lyon	Trov. Norris, A. and S.
Vandercom and Co.	Lysaght	S. J. Bryant	Prom. Amory, Nelson and
Same	Lysaght and another	S. J. Same	Prom. Same [Co
Coe	F. W. Coe	Howard	Stretton
Horradaile and Co.	Gardner and another	Kleman	Prom. Cox.
Meyrick	Gilkes and others	S. J. The Newmarket Railway Company	Prom. T. Tyrrell]
H. Clarke	Edwards and another	S. J. Great Western Railway Company	Ca. Maples and Co.
W. Tucker	Pickett	Batley	Ca. J. A. Jones
Wilde, R. and Co.	Follett and others	S. J. Delaney	Prom. Morgan
A. Warrant	Snow	S. J. Snow	Prom. G. Vincent
Amory and Co.	Cooper	S. J. Laurie	Prom. Hutchinson
J. and W. Sheffield	Hamborg	Humphreys	Prom. Young and Son
H. Lloyd	Barnett and another, assignees, &c.	S. J. Reading	Prom. J. Wells
Rickards and Co.	Webster	S. J. Webster	Prom. Gregson and R.
Phillips and Son	Thomas and another	S. J. Thomas	H. Thomas
W. M. Wilkinson	Dakin, admix. &c.	S. J. Brown and anr.	Sole and Turner
J. W. J. Dawson	Ellis	S. J. Moore	Prom. Tilson and Co.
Gordon and Son	Maitland and anr.	S. J. King	Prom. Freeman, B. & R.
Phillips and Son	Thomas and another	S. J. Allen	Prom. Van Sanden & Co.
Cotterill	Hughesdon	S. J. Jardine	Prom. Freshfields
Vandercom and Co.	Price, jun. and ors.	S. J. Marshall	Prom. Hughes, K. & M.
Cotterill	Hambro, Surr. Partner, &c.	S. J. The London Assurance	Covt. Lowless and Son
S. Yates	Kawil	Benett	Prom. Barton
Bristow and T.	Joyce	S. J. Smith	Prom. Few and Co.
Jenkyn	Cocks	S. J. Moore	Prom. Tilson and Co.
Same	Cocks, jun.	S. J. Moore	Prom. Same
Same	The Count De Morel	S. J. Shadbolt	Prom. Same
Same	Godley	S. J. Moore	Prom. Same
Same	Cartwright	S. J. Shadbolt	Prom. Same
Same	Young	S. J. Same	Prom. Same
J. & J. H. Linklater	Kelham	Bumpstead	Prom. Mills
Same	Fussell, P. O.	Woodward	Prom. Howell
Phillips and Voss	Card	Winter	Ca. Beanlands
Cotterill	Devaux and ors.—(reva-net)	Hoed	Dt. C. E. Cullen

Fesenmeyer	Boulter	Peplow	Dt. Rowlett
Same	Same	Brooke	Prom. Pritchard & Collett
H. Knight	Stephenson	Jay	Prom. Philipps and Voss
Oliverson and Co.	Bold and anr.	Claxton	Prom. Gregory and Co.
J. May	Wilson	S. J. Preston	Iss. Frost
J. B. Towse	Wardens and Commonalty of the Mystery of Fish- mongers of the City of London	Dimsdale and others	Prom. { C. H. Stedman T. J. Jerwood S. W. Darke
H. Lloyd	Wallen and anr.	Castell	Dt. Bickley
Church and Langdale	Joyce	Carter	Prom. Walker
Cotterill	Spartali	Papayanni and another	Prom. Chester, T. and Co
Druce and Sons	Watney	Waters	Alger
H. Knight	J. Stephenson	Jay	Ca. Philipps and Voss
Wilde and Co.	Bell, P. O.	Welch	Prom. Stephens
Chidley	Smith	Heath	Prom. Peile and Sea
Stafford	Salmon.	Merryweather	Prom. Thos. Taylor
Venning and Co.	Haslip and anr.	Vine	Tres. Lewis and Lewis.
Landor	Harvey and anr.	S. J. Johnson and anr.	Ca. Saward

Exchequer.

London.

Todd	Cannan and another, as- signees, &c.	Moor	F. Issue, Messrs. Langham
G. Fry	Reed	Watling	Ca. Rosson
W. J. Holt	Holt	Wilton, sen.	Covt. W. H. Sadgrove
Same	Same	Wilton, jun.	Covt. Same
Parker and Co.	Shropshire Union Railway and Canal Company	Coode	Dt. G. Vincent
Same	Same	Hodgson	Dt. Same
Same	Same	M'Gregor	Dt. Same
Same	Same	Anderson	Dt. Same
W. W. Jackson	Richards	Scott	Pro. W. H. Smith
Bridges and Co.	Rogers	Evans and another	Dt. J. Fallows—J. Raw
M. Fraser	Overton	Truman	Pro. E. Isaacs
Philipps and V.	Harrison	Nott	Dt. Thompson and D.
W. W. Jackson	Noble	Emmett	Dt. Emmett and K.
W. Murray	Hallifax and others	Lyle	Pro. Crowder and M.
Shield and H.	Wilson and another, ad- ministrators, &c.	Attwood	Dt. Elmslie and P.
W. Hartley	Leeds & Thirak Railway	Neilson	Dt. Gregory, F. and Ca.
Maples and Co.	Fossick and another	S. J. Blane	Pro. Denton and Co.
Mardon and P.	Follett and others, assign- ees, &c.	S. J. Philpot	Iss. Gregory and Son.
Baxter and Co.	Great Northern Rail- way	S. J. Uzielli	Dt. Swan
Pittendreigh and S.	Staunton and another	Skeen and another	Pro. W. H. Griffin
Dodd and Co.	Gruber and another	S. J. Daniell	Pro. Coode and B.
R. and W. and G. Roy	Bozanquet, P. O., &c.	Shortridge	Sci. fa. Johnston and Co.
Johnston and Co.	Belfast and County Down Railway	S. J. Heseltine	Dt. Teague
Oliverson and Co.	Christachi	S. J. Lackersteen	Pro. Dickson and O.
S. W. Darke	Dalton	S. J. J. Bush	Pro. Mullins
Mardon and P.	Follett and others	S. J. Matthews and another	Iss. T. C. Gidley
S. Neal	Chapman and another	Harris	Ca. Walsh
J. Appleton	Castrique	Tomlin	Pro. Crowder and M.
Same	Dailey	Aitkin	Dt. Stafford
T. Tyrrell	Newcastle Railway Com- pany	S. J. Froggatt	Dt. In person
Compigné	Williams and another	Spincer, exor. &c.	Dt. G. Weller
J. E. Fox	Birley and others	Markwick	Pro. Taylor and S.
Milne and Co.	Caddell	Buckle	Dt. G. Hall
W. H. Davis	Andrew	Parnell	Pro. Parnell
Chester and Co.	M'Dowall and another	M'Meeking	Dt. C. B. Wilson
T. Lewis	Berriman	Smith	Pro. Gregson and K.
Crowder and M.	Heath and others	S. J. Smith and others	Pro. M'Leod and S.
Wilkinson and G.	Cooper, Esq., P. O.	Falk	Dt. Keighley and Co.
M. Sangster	Brooks and another	S. J. Wilder, extrix., &c.	Pro. Lethbridge and Co.
Leadbitter	Carr, clk.	Tewart	Dt. Crowder and M.
Maples and Co.	Wilkinson	Candlish, extrix., &c.	Covt. W. Moss
Dimmock and B.	Lea	Bushell	Dt. Rushworth
Thompson and D.	Chalkley	Ludlam	Covt. Gregson and K.

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DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, JUNE 16, 1849.  
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PROCEEDING BY SCIRE FACIAS AGAINST MEMBERS OF COMPANIES.

THE multiplication of joint-stock companies, and the increased number of instances in which the members of associations of this description became unable to fulfil their mutual engagements, or to satisfy the claims of strangers from the joint funds of the company, created a new branch of law, and obliged the Courts, in many cases, to establish new rules of practice. The proceeding by *scire facias* against members of companies, in the Common Law Courts, ranks in novelty and importance with the new scheme for winding-up the affairs of joint-stock companies, which at this time engrosses the attention of so many equity practitioners.

The proceeding by *scire facias* was for some time directed exclusively against the members of joint-stock banking companies. By the statute 7 Geo. 4, c. 46, the legislature endeavoured to unite, in companies of this description, the distinct characters incidental to a corporation and an ordinary trading co-partnership. The act imposed liabilities and conferred remedies, heretofore unknown to the law, and at the same time created exemptions and discharges of an equally novel character. The remedy given to persons contracting with a joint-stock banking company was to be pursued in the first instance against the registered public officer of the company, and a judgment obtained against him was rendered available against shareholders of the company, under various circumstances and conditions. The statute enabled a creditor, having obtained judgment against the public officer of a banking co-partnership, to issue execution against three classes of persons:—1st, Any

member for the time being of such co-partnership; 2ndly, Any person, who was a member at the time the contract on which the judgment was obtained was entered into, or who became a member before the contract was executed; and 3rdly, Any person who was a member when the judgment was obtained, without regard to his being a partner when the contract was entered into or executed. By this enactment, as observed by Baron Parke in a recent case,^a “those who were primarily liable at common law are made liable only in the second degree, and those who at common law were not responsible at all are made primarily liable.” With respect to the second and third class of persons rendered liable—those who were members at the time when the contract was entered into or of the judgment obtained—it is provided that execution shall not issue without leave obtained from the Court in which the judgment was had, after notice of such application to the person sought to be charged, nor after the expiration of three years next after such person ceasing to be a member. When application is made to the Court therefore, the Court is charged with the duty of ascertaining within which of the three classes the person against whom execution is prayed is found, and also that the execution against members of the first class is ineffectual, before the second and third class is resorted to: in other words, that *bond fide* attempts have been made to procure satisfaction from the parties made primarily liable before execution goes against those made liable on default. As might have been anticipated, the Courts of Law have experienced great difficulty in carrying into effect the ano-

^a *Bank of England v. Johnson*, 18 Law Jour. 238, Exch.

malous provisions of this act of parliament, and many questions of considerable nicety have arisen under it. It was at one time suggested, that the proper mode of ascertaining the parties against whom to put the judgment in execution was, by causing a suggestion to be entered on the Roll; but the Court of Queen's Bench refused to allow a suggestion to be entered on an affidavit that the individual intended to be proceeded against was a partner, and decided that no execution could issue against a shareholder merely as such without a *scire facias*,^b and the same rule was shortly after adopted by the Courts of Common Pleas^c and Exchequer.^d These decisions were in conformity with the rule of practice that whenever one party is to be rendered liable to a judgment obtained against another, it can only be done by *scire facias*, and the principle was considered applicable to the case of a public officer, who was merely the representative of the shareholders. Where the public officer happened also to be a member of the company, the principle ceased to be applicable, and in such a case execution was allowed to issue against him without a *scire facias*.^e

The rule of practice having been settled, that the proper mode of proceeding against members of a joint-stock bank was by *scire facias*, the principle was extended to other cases in which acts of parliament were passed, having provisions substantially similar to those contained in the 7 G. 4, c. 46. In all such cases, the mode of proceeding to be adopted against a member or shareholder of a company not a party to the record in the original action, is by *scire facias*. The next point to be determined was, in what cases the judgment creditor might avail himself of this proceeding as of course, and when it was necessary he should obtain the sanction of the Court? This question was merely one of construction, and it was held, that under the 13th clause of the statute 7 Geo. 4, c. 46, a judgment creditor was entitled to sue out a *scire facias*, without any application to the Court, when the proceeding was directed against one who was a member at the time of the judgment and execution; but when it was wished to fix one who was not a member at the time of the judgment, but who was a member at the time the contract was made, it was necessary to come to the Court for leave to sue

out the *scire facias*; and in order to obtain that leave, to satisfy the Court, that there had been a *bond fide* attempt made to procure satisfaction of the debt from the members of the company for the time being. In order to show that such attempts have been made to obtain satisfaction from the existing shareholders, it is not indispensable that an execution should be issued against every shareholder for the time being. The Courts do not expect the plaintiff to proceed against insolvent shareholders, or to sue out executions, when it appears probable that such executions would be ineffectual.^f

Where a *scire facias* issues to charge a party as a shareholder, without the leave of the Court, in a case where such leave is necessary, it is an irregularity, to which the general rules of practice relating to irregularities are applicable. For example, the party complaining of the irregularity must apply to the Court and promptly,^g he may waive the objection by pleading to the *scire facias*,^h and a plea that the *scire facias* issued without leave of the Court would be a bad plea.ⁱ

When a *scire facias* issues against a shareholder of a joint-stock company, the subsequent proceedings are similar to those in other cases of *scire facias*, and the pleadings are governed by the like rules. The defendant is not at liberty to plead to the declaration in *scire facias*, any matter which might have been pleaded or set up as a defence to the original action;^k but a plea that the original judgment was obtained by fraud has been held good.^l A traverse that the nominal defendant in the original action did not fill the office in respect of which he was sued—as where a defendant was sued as secretary of a joint-stock company—was said in one case not to be a good plea, because if such defendant were not secretary, the company would be bound by the judgment against him, and if the nominal defendant collusively suffers judgment by default, the proper course for the shareholders is, to apply to the Court to set aside the proceedings.^m Under this new statutory mode of proceeding, the plaintiff, at his discretion, is entitled to proceed against all or any of the members

^f *Harvey v. Scott*, 17 Law Jour. Q. B. 9.

^g *Ricketts v. Bowhay*, 3 Com. B. 889.

^h *Bradley v. Urquhart*, 11 Mees. & W. 583.

ⁱ *Bradley v. Warburg*, 11 Mees. & W. 452.

^k *Bradley v. Eyre*, 11 Mees. & Wels. 432.

^l *Philipson v. Earl of Egremont*, 6 Q. B. 587; *Fowler v. Rickerby*, 2 Man. & Gr. 760; 10 Law J., pt. 7, 149.

^m *Bradley v. Eyre*, *ubi supra*.

^b *Bosanquet v. Ransford*, 11 Ad. & El. 520; 3 Per. & D. 298.

^c *Whittenbury v. Law*, 6 Bing. New Cas. 345.

^d *Cross v. Law*, 6 M. & W. 217; 8 Dowl. 789.

^e *Harwood v. Law*, 7 M. & W. 203; 8 Dowl. 899.

of the company. As soon as the debt is levied upon one, then all the rest are exonerated, but until the judgment is thus satisfied, there may be concurrent writs against any number of shareholders."

Such has been the effect of the principal reported decisions, but the subject is not exhausted, nor can the system of proceeding yet be said to be matured. Indeed, in the Term which has just concluded, several other cases were brought under the consideration of the Courts, the particulars of which will in due time be submitted to our readers.

LEGISLATIVE MEASURES RELATING TO THE LAW.

BANKRUPT LAW.

DURING the past week, several important measures connected with the administration of the law have come under the consideration of the legislature.

The *Bankrupt Law Consolidation Bill*, after having passed through the House of Lords, as stated by Lord Brougham with the written consent of the Lord Chancellor, has met with an unexpected interruption in the House of Commons, where Lord John Russell intimated that, although considering the measure in *extenso* as an improvement in the law, its details were too complicated and important to enable him to state that the bill in its present shape would receive the support of her Majesty's government. His lordship suggested the expediency of a reference to a Select Committee, a proceeding which, if adopted at this advanced period of the Session, would render the passing of the bill extremely improbable. Lord Brougham addressed the House of Lords, as the old reporters have it, in *furor*, complaining of the obstacles which were interposed to the progress of the measure, and threatening the obstructions in the Lower House with unutterable things! It is quite plain that the success of the measure is jeopardised because there is a want of confidence in those who have taken upon themselves to conduct it. We regret this. The bill should be considered on its intrinsic merits.

PALACE COURT.

Lord Dudley Stuart has introduced a Bill for the *Reform of the Palace Court*, which is to be read a second time on

Monday. The principle of the bill, as we understand it, is to allow the suitors to transfer their causes to the County Courts. We have reason to believe that this would prove a very partial and inadequate remedy for the evils complained of. The Palace Court has a jurisdiction unlimited in amount, and a majority of the causes commenced in that Court could not be tried in the County Courts without an entire change in the constitution of the latter. Moreover, the Palace Court is now resorted to by suitors in cases within the County Court jurisdiction, because, though objectionable, it is preferable. It is running from Sylla to Charybdis, to force suitors from the Palace Court to the County Courts! The reform that is desired is, to throw open the Palace Court to the whole body of the legal profession. The Attorney-General candidly stated, that his difficulty was to find the means of compensating those who had purchased their situations in the Palace Court, but he did not despair of being able to effect this object before the Session came to its termination. Anxious as we are, for the sake of the public, to see the monopoly got rid of, it should not be effected at the expense of private individuals, or of justice.

IRISH INCUMBERED ESTATES BILL.

The *Irish Incumbered Estates Bill*, a measure in which the legal profession in both countries, as well as the community at large, are deeply interested, after passing through the House of Commons, has been referred to a Select Committee of the House of Lords. A copious summary of its leading provisions is now submitted to our readers.

The number of persons, resident in all parts of the kingdom, interested as mortgagees and otherwise in landed estates in Ireland, and the novelty of the proposed experiment, induces us, at the sacrifice of some considerable space, to submit to our readers a summary of the measure under which the government proposes to supersede the authority of the ordinary tribunals, in dealing with incumbered estates in Ireland.

The bill contains forty-three clauses, the first of which provides for the appointment under the Royal sign manual of *three Commissioners*, to be styled "The Commissioners for the sale of Incumbered Estates in Ireland."

By the clauses which immediately follow, from two to ten, it is proposed to enact that the Commissioners are to have a Common Seal; that two are to form a quorum; that they shall have authority to appoint a secretary, clerks, &c., for a period not exceeding

* *Nunn v. Lomer*, 18 Law Jour., Exch. 247.

five years, and the payment of salaries is provided for. The Commissioners are declared to be disqualified to sit in parliament—a form of oath is given to be taken by them, and they are directed to frame and promulgate forms of application, &c.

The Commissioners are also to make general rules for “regulating the course of procedure,” and generally for the due execution of the powers vested in them under the act, which rules are to be confirmed by the Privy Council of Ireland, enrolled in Chancery, and laid before parliament, after which they will have the force and effect of an act of parliament.

By section 12, the Commissioners have power to summon and examine all such persons as they shall think fit in relation to any matter or question depending before them, with the same power of enforcing obedience to their summons as the Court of Chancery has. The Commissioners to receive affidavits in evidence, if they think fit, and to appoint persons to take affidavits and examinations.

The orders of the Commissioners to be enforced in England “by the like process as an order for payment, or for accounting for money, made by the High Court of Chancery in Ireland, under the provisions of the 41 Geo. 3, c. 49.

Section 15 gives the Commissioners all the powers, authority, and jurisdiction of a Court of Equity in Ireland, for investigating titles, ascertaining charges and incumbrances, settling priorities, rights of owners, lessees, &c.; it likewise empowers them to send cases for the opinion of Courts of Law, and to direct issues of fact to be tried by a jury, and also to refer any inquiries they may think proper to one member of their own body.

Section 16 provides, that “where land in Ireland, or a lease in perpetuity or for a term whereof not less than sixty years shall be unexpired,” &c., shall be subject to any incumbrance, the owner, lessee, or any incumbrancer may, within three years from the passing of the act, apply to the Commissioners for a sale thereof;” but it is declared by the next clause, “that, for the purposes of this Act, the land shall not be deemed subject to an incumbrance unless the same shall affect a term of not less than fifty years absolute unexpired, or a greater estate in such land, nor unless such incumbrance shall have been created by the owner of an estate of inheritance, but an incumbrance charged under a power created by the owner of an estate of inheritance shall be deemed to have been created by such owner; and such lease in perpetuity or other lease as aforesaid shall not be deemed subject to an incumbrance where the same shall affect a derivative estate or interest only, or less than the whole estate created or agreed to be created by such lease in perpetuity or other lease as aforesaid, unless such incumbrance shall have been created by the owner of, or person entitled to, the whole estate created or agreed to be created by such lease in perpetuity or other lease as aforesaid, but any incumbrance

charged under a power created by the owner of, or person entitled to such whole estate as aforesaid shall be deemed to have been created by such owner or person so entitled.”

Where an incumbrance shall be subject to limitations of estate or interest, the Commissioners may proceed on the application of the first incumbrancer, or other person whose interest in the incumbrance seems sufficient to the Commissioners, and give notice to hear all parties interested who may apply to them, investigate title, incumbrances, state and circumstances of the land, &c., “so far only as may be necessary to enable them to determine whether, under all the circumstances thereof, it is expedient that a sale should be made, &c.,” in which case they may, at their discretion, order a sale of all or part of the land.

By section 20, where a sale shall be made under this act, the Commissioners shall ascertain the tenancies of the occupying tenants, and of any lessees or under-lessees subject to whose tenancies, leases, or under-leases, the owner or incumbrancer applying to the Commissioners under this act may be owner or incumbrancer, and may give such notices and make or cause to be made such inquiries as they shall think necessary for ascertaining and securing the rights of such tenants, lessees, or under-lessees as aforesaid; and the sale shall be made subject to the tenancies, leases, or under-leases so ascertained, and, when the Commissioners shall think fit, such sale may be made subject to any annual charge affecting the land or lease or part thereof sold, or to any such apportioned part of such annual charge, as the Commissioners may think fit should remain charged thereon.” Such sale shall be under the direction of the Commissioners, by public sale or private contract, together or in lots or parcels, and generally as they shall think fit—the conveyance not to need execution by any other party but the Commissioners, and to express or refer to the tenancies, leases, &c., &c., subject to which the sale is made—in the form given in the schedule to the act or to the like effect, with such limitation as the purchaser, with their approval, may direct.

The purchase-money is to be paid into the Bank of Ireland, and on such payment the purchaser to be discharged from all liability in respect of the application of the money so paid.

Section 23 provides, “that every such conveyance, executed as aforesaid by the Commissioners upon the sale of land, shall be effectual to pass the fee simple and inheritance of the land thereby expressed to be conveyed, subject to such tenancies, leases, and under-leases as shall be expressed or referred to therein as aforesaid, but, save as aforesaid and as hereinafter provided, discharged from all former and other estates, rights, titles, charges, and incumbrances whatsoever of her Majesty, her heirs and successors, and of all other persons whomsoever: and every such conveyance or assignment, executed by the Com-

missioners upon the sale of a lease in perpetuity or other lease, shall be effectual to pass the estate created or agreed to be created by such lease and then remaining unexpired, subject to the rent and covenants annexed to the reversion expectant on the determination of such lease, and to such tenancies, leases, and under-leases as shall be expressed or referred to in such conveyance or assignment, but, save as aforesaid and as hereinafter provided, discharged from all rights, titles, charges, and incumbrances whatsoever affecting the leasehold estate or interest: provided that where any land or lease or part thereof shall be sold and conveyed or assigned, subject to any annual charge or apportioned part thereof, such annual charge or such apportioned part thereof only (as the case may be) shall remain and be charged on and payable out of such land or lease or part thereof as in the conveyance or assignment shall be expressed."

The Commissioners are authorised to put the purchaser in immediate possession by an order to the sheriff, and also to order the delivery to him of leases and other evidences of tenancy.

As to the application of the purchase-money, it is provided by section 26, "that the Commissioners shall, out of the purchase-money to be received on the sale of any land or lease, or part thereof, under this act, allow and pay such costs of and consequential on the application for the order for the sale as they shall think fit, and the expenses of and incidental to the sale; and the surplus of such purchase-money, after payment of such costs and expenses, shall, under the order of the Commissioners, be applied in or towards payment or satisfaction of the incumbrances or charges which affected such land or lease, or part thereof, according to their priorities, and shall, subject as aforesaid, be paid to the owner previously to such sale of such land or lease, where such owner was absolutely entitled thereto, or, where not so entitled, be laid out in the purchase of land, which shall be limited and settled to the same uses, upon the same trusts, for the same purposes, and in the same manner as the land or lease or part thereof sold, stood, settled, or limited to, or such of them as shall be then subsisting or capable of taking effect; and until such money can be so laid out, it may, under such order as aforesaid, be transferred or paid over to trustees to be appointed or approved by the Commissioners, for the purpose of being so laid out as aforesaid, with such power for the investment thereof in government stocks or securities in the meantime, and such directions for the payment of the income of such investment in the manner in which the rents of the land to be purchased would be applicable, as the Commissioners shall think fit."

Section 29 declares, that no payment towards the discharge of incumbrances not being in full, shall impair the incumbrancers' right to the balance, and that no payment in respect

of any incumbrance shall impair the right of any person out of whose estate the payment shall be made to have a remedy over against any other party "except so far as the Commissioners under any special circumstances shall order." And section 30 provides, "that it shall be lawful for the Commissioners, where they think fit, to pay to any person entitled to any annual or other charge, not being an incumbrance according to the definition of this act, who may consent to accept the same, a gross sum in discharge or by way of redemption thereof or of a part thereof, and, where a part only of any land or lease subject to any incumbrance or charge is sold, to charge the part not sold with such incumbrance or charge, or an apportioned part thereof, in exoneration of the money arising from the sale, and to enable or authorise persons to release the money arising from the part so sold from any incumbrance or charge, or to relinquish their claim on such money in respect thereof, without impairing or affecting such incumbrance or charge as to the remaining part of the land or lease originally charged; and the Commissioners, where they think fit, may invest or provide for the investment of money to meet any annual or periodical charge, or any other charge, incumbrance, or interest, where, by reason of such charge, incumbrance, or interest being contingent or otherwise, it shall appear to the Commissioners proper or expedient so to do, and otherwise may make such orders and directions for applying the money arising from any sale, in such manner as will secure the convenient application thereof for the benefit and according to the rights of the parties interested in the land or lease or part thereof from the sale of which the same shall have arisen."

By section 32, where a lease is ordered to be sold, the Commissioners, on application of the reversioner, may order the sale of the reversion also, apportioning the money and expenses.

Section 33 provides, "that if any land or lease to be sold under this act shall be subject to a lease or under-lease for years or lives, comprising other land at an entire rent, it shall be lawful for the Commissioners to apportion the rent between the land to be sold and the remainder of the land subject to such rent; and where it is intended to sell under this act a part only of any lease in perpetuity or other lease, it shall be lawful for the Commissioners, where they shall think fit, and (having regard to the rights and interest of the owner of the reversion) it shall appear to them just so to do, to apportion the rent reserved by such lease between the land to be sold and the remainder of the land; and the Commissioners shall direct notices of any such intended apportionment as aforesaid to be given to such persons and in such manner as they shall think fit, and shall hear such parties as shall apply to them in relation thereto; and after such apportionment and after the sale shall be completed, the owners of the reversion in the re-

spective lands shall have the like remedies for the apportioned rents against the lands out of which the same shall be payable, and the owners and occupiers thereof respectively, as were subsisting for the entire rent before such apportionment; and all the covenants, conditions and agreements of every lease or under-lease, except as to the amount of rent to be paid, shall, as regards the apportioned parts, remain in force in the same manner as they would have done in case no such apportionment had taken place."

The sections which immediately follow provide for cases in which lunatics, infants, married, women, &c., are interested and that proceedings shall not abate by death.

Section 36 provides, as to costs, "that in every proceeding under this act the Commissioners shall have full power and discretion as to the giving or withholding of costs and expenses, and as to the persons by whom, and the funds out of which, the same shall in in the first instance or ultimately be paid, repaid, and borne, shall and may apportion the same amongst such parties, and in respect of interest, rents, or income, and principal or corpus, as they shall see fit."

The following section enacts, that application may be made to the Commissioners for a sale under this act, and an order for such sale may be made by them notwithstanding any pending proceedings in a Court of Equity in England or Ireland, or any decree of any such Court of Equity already made for sale; and where it shall be shown to the Commissioners that a decree for sale has been made by a Court of Equity, the Commissioners shall, if they see fit, without further inquiry, order a sale of the land or lease decreed to be sold; and where any sale shall be made of any land or lease, or part thereof, in respect of which there shall have been a decree of a Court of Equity, or any proceedings pending in a Court of Equity, the Commissioners shall, in distributing such monies and in their other proceedings, have regard to the proceedings in such Court in relation to the priorities and rights of incumbrancers and others; and where there shall have been a decree of a Court of Equity the Commissioners may, in distributing the monies arising on the sale and in their other proceedings, proceed upon and be guided by the declarations of, and inquiries and proofs made and taken under, such decree in relation to such priorities and rights as aforesaid; and the Commissioners shall, out of any monies arising from any sale under this act, where there shall have been any such decree or pending proceedings as aforesaid, make such provision for payment of any costs incurred in relation to the proceedings in the Court of Equity as the circumstances may require; or the Commissioners may, in any of the cases aforesaid, where they think fit, order all or any part of the purchase-money, after payment thereof of such costs and expenses as may be payable thereout under the orders of the Commissioners, to be paid into the Court of Equity

in or under any suit or decree here pending or made.

It is also provided, that after an order by the Commissioners for a sale, proceedings for a sale under any decree previously made in any Court of Equity, &c., shall be stayed, and Commissioners may stay all proceedings pending in such Court, and no suit shall be commenced in such Court pending proceedings before the Commissioners without leave from them; and that no proceedings before the Commissioners shall be stayed or removed, by injunction or certiorari.

Section 40, which is the last of importance, empowers Commissioners to review, rescind, or vary any order made by them, and gives an appeal to the Privy Council "where the Commissioners shall allow such appeal, but not otherwise," within one calendar month, the order on such appeal to be final.

The tendency and effect of the system proposed to be established by this bill will be a subject for future observation.

DEFECTS OF COURTS MARTIAL.

CASE OF CAPTAIN GEORGE DOUGLAS.*

LAWYERS are supposed to cling to their forms and usages with unreasonable tenacity, and it is imagined that the rules of evidence and mode of conducting trials, both civil and criminal, are encumbered with useless strictness. There are cases, no doubt, which may be best referred to private arbitration, but even there it is deemed wise to avoid the temptations to perjury, and to conduct the inquiry according to the rules which experience has established for best eliciting the truth. Our readers, familiar with the course of proceeding in our Courts, whether at Westminster Hall, the Old Bailey, or the Quarter Sessions, and knowing the ample legal means which are afforded for conducting every trial, will be surprised at the course adopted on the recent Court Martial held at Guernsey, on the 28th March, and continued by adjournment till the 12th of April. After carefully reading through the report of the proceedings, we are compelled to say, that its result is most extraordinary and unaccountable, and exhibits the greatest failure of justice, alike in substance and in form, that has occurred in modern times.

We of course admit that a Court Martial, composed of eminent military officers, is the

* Proceedings in a General Court Martial held at Guernsey on Captain George Douglas, 16th Regiment. The Defence conducted by Samuel Warren, Esq., Barrister-at-Law: Blackwood; Beaming.

only proper tribunal on questions affecting the honour and character of their brother officer; but this tribunal, like all others, must proceed upon *facts proved according to the well-established rules of evidence*. Now we maintain that those rules and their application can be thoroughly known and understood only by men really "learned in the law."

It is the same in Coroners' Inquests. A medical man may be a very important witness, but a very bad judge. He admits evidence that he should reject, and rejects that which he should admit.

This evil has prevailed in a remarkable degree on the present trial. We doubt not that the young and gallant officer who acted as Deputy Judge Advocate, discharged his duty conscientiously, so far as his knowledge extended, and that the fourteen officers who constituted the Court also intended faithfully to execute their office, as well to the Prisoner at the Bar, as to the Army, whose honour and discipline they were bound to maintain.

But the *entire value* of their judgment on the case before them depends upon its being founded upon just principles:—on their adjudicating on facts proved by just means, —on their receiving no testimony which ought to be excluded, nor refusing any which ought to be admitted. Need it be said, that the verdicts of the freeholders of the metropolitan county, and of the merchants of London, are every Term set aside, if mistake be discovered in the conduct of a case, under even the direction of the best judges of Westminster Hall. Yet, here is a case,—affecting the character of a gentleman of highly respectable family, and with him involving no small amount of pecuniary interest, but above and beyond all, his character and honour through life—conducted in defiance of the best established legal principles!

But we must bring the simple facts of the case before our readers:—An ox, the property of a farmer at Alderney, named Bisset, was killed on the 5th Jan., and supposed to have been thrown into the sea. Captain Douglas had been practising ball-firing on the same day, on a battery near the spot. The animal, on being taken on shore, was found to have a wound in its neck, and the farmer concluded that whoever had been ball-firing had shot the ox. He accordingly lodged a complaint with the judge of the Alderney Court.

It does not appear that proper attention was paid to the time of the death of the animal, so as to connect that event with the

time of the ball-firing. This, of course, was essential in order to establish the relation of cause and effect between the two events. It was proved at the civil Court, that the ox was browsing after the firing on the battery ceased. No ball was found in its body, nor any opening for its exit, nor was there any proof that it was within pistol shot at the time when the firing took place. Of all cases of circumstantial evidence that we ever heard, this seems to have been the most meagre, and we wonder not that the judge of the Civil Court could make nothing of it, as we shall presently see.

In the absence of the ordinary evidence of *facts*, it was attempted to make out the case by *admissions*, to be obtained in conversation with the person who was supposed to have been on the battery firing at a mark. A constable was therefore sent to Captain Douglas. I was sent," (says he,) "to inquire about a bullock that had been shot. I asked him if he knew anything about it, and he said no." Other expressions were sworn to, but the conversation, which lasted only a few minutes, amounts to this:—that the constable, whose attention was directed to the killing of the bullock, (the sole offence into which it was his duty to inquire,) confounded the denial of Captain Douglas of any knowledge of shooting the bullock, with his denial of shooting at a mark on the battery. And upon this single testimony of the constable, Captain Douglas has been tried by a Court Martial for a *wilful falsehood*, and (will it be believed) found guilty!

It appears to have been well known that Captain Douglas and his friend Ensign Parker had been practising at a mark on the battery, and this knowledge was evident by both these gentlemen being called upon by the constable. The truth appears to be, that the animal was killed by some workmen, "navies," or others, who were at variance with the farmer, but the Court Martial would not allow the farmer to be questioned on that subject. And in this respect, the defence, which might have thrown the blame of destroying the animal on other persons, was impatiently stopped by the Court as irrelevant to the inquiry,—though nothing can be more obvious than if the defendant, under the guidance of his skilful adviser, had succeeded in showing that the owner of the ox was on terms of hostility with the labourers in the neighbourhood, one of them was more likely to have avenged his supposed injury, than an officer who it is evident was a very humane

and considerate man. Moreover, the witness usually spoke French, though acquainted with the English language, and (without imputing to him a wilful falsehood) might have misunderstood the effect of the conversation. All the probabilities of the case should have led to an *honourable* acquittal.

Then it appears that a dispute or difference existed between Captain Douglas and Colonel Le Mesurier, the Town Major of Alderney, who was one of the principal witnesses on the Court Martial. On the cross-examination of this witness, it appeared important to show the grounds of his ill-feeling towards the accused; but the Court would not permit any questions to be put implicating the motives of the witness. Thus, of course, shutting out in the defence the power of impeaching the evidence of the witness, whether warped only by prejudice, or by stronger motives. In all these respects, it is manifest that the Court Martial was wrong, and that it denied to the accused the ordinary means of rebutting the testimony adduced against him.

It is remarkable that this unfortunate case should have undergone an investigation both before the Civil Court of the island, and a Court of Military Inquiry, which took place *on the spot*, occupying a period of two months, and ending by both tribunals declaring that there was no sufficient evidence to establish a charge against any one, and yet subsequently to all these prolonged inquiries, and *without a scrap of new evidence*, a numerous Court Martial is appointed, at a great expense to the country, to assemble *in another island*, but without the aid of any legal Judge-Advocate or deputy!

We shall here place before our readers the "Decree" made by the Civil Court:—

"At the Court of the Island of Alderney, the 1st March, 1849, before John Gaudion, Esq., Judge, and in presence of W. J. Sandford, John Gauwaice, Lucas Lecocq, and Nicholas B. le Bair, Esqrs., Jurats.

"Upon information given to the Court of the death of a bullock belonging to Mr. Evan Bisset, tenant of Longy Farm, which said bullock the said Bisset *pretended* had been maliciously killed on the said farm on Friday the 5th of January last, an inquiry was begun by this Court on the 9th of the said month of January, when the said Bisset and several other witnesses were examined upon oath, with a view of finding the guilty party. The Court then hoping, that by more minute searches made by the said Bisset and the constables, the authors of the pretended crime might be discovered, postponed the continuation of the inquiry.

"That a reward of 10*l.* sterling having been in

the first place publicly offered by the said Bisset, and subsequently increased to 20*l.* sterling, which said reward was publicly announced in the Guernsey papers, rewards offered with a desire of discovering the perpetrator of the supposed crime, which rewards, it should appear, have not had the desired effect, but that the publicity so given drew the attention of his Excellency the Lieutenant-Governor to the facts, who, in the interests of justice, wrote to the Judge on the subject, and further instituted a Military Court of Inquiry. That during the interval, neither the said Bisset nor the constables did discover further facts. The Court, nevertheless, on the 16th of February last was specially assembled, at which sitting the said Bisset expressed a wish that the continuation of the inquiry might be postponed, hoping that the said delay might be useful to the ends of justice. The Court for those and other reasons postponed the said inquiry; but with a view of being better acquainted with the locality where the said bullock is supposed to have been killed, went to the spot, that is 'Longy Lines.'

"The Court, having by this delay given sufficient time to the said Bisset and the constables, resumed their inquiry on the 27th and 28th of last month, and as yesterday, at the close of the said inquiry, the Public Prosecutor declared having no further evidence, the Court, with a view of framing an Act declaring the proceedings that have been taken, postponed to this day the taking of the whole into consideration; and after hearing the conclusions of the Queen's Procureur, has unanimously decided that there has been no evidence produced during the inquiry which might criminate or implicate any one of having committed the pretended crime, and that even doubts might arise whether the bullock died by the effects of a bullet. That the suspicions that had been raised against Captain Douglas and Mr. Parker, two of the officers of the 16th Regiment stationed in this Island, are not confirmed by the evidence produced in this inquiry, although it is proved and acknowledged that the two said officers fired with ball from a pistol in the Battery at Longy Lines on the said day of the 5th January last.

"The Court, nevertheless, in framing this Act cannot but remark, that the secret made by Captain Douglas and Mr. Parker, of their amusing themselves by firing with a pistol at the place above-mentioned, might have given a cause to the said Bisset of suspecting them of having, either through accident or otherwise, killed his bullock. The Court has for the present terminated the said inquiry, reserving to themselves the right of taking cognisance of any new facts that might lead to the discovery of further information."

The following is extracted from the letter of Major-General Bell, dated February 23rd, stating the result of the Military Inquiry:—

"It is to be regretted that the Court could not ascertain by whom the animal mentioned in the proceedings was shot; but I am not the less satisfied that every means was used by the

Court to discover that fact. The proceedings throw much light upon other parts of the transaction in question, previously concealed.

"You will be pleased to intimate to Mr. Evan Bisset, that I have acted to the utmost of my power on the representation which he made to me, but that no person belonging to the garrison of Alderney has been proved to have committed the act of which he complained.

"It will now be for the Court of Alderney to decide whether—now that the Military Inquiry is at an end, for the present at least—it will still be desirable to proceed with the Judicial Inquiry, by way of *enquête*, as proposed in my letter to the Judge of the 13th instant."

We come now to Mr. Warren's masterly defence on the present Court Martial. We can readily conceive that the learned counsel must be grievously disappointed and greatly astonished at the result; but he must possess the consolation of knowing that both in the general conduct of the case, in so far as it depended on him,—on the skilful framing of the questions necessary to bring out the truth of the defence and expose the groundlessness of the charge,—and in the forcible and eloquent Address, composed with the speed of the "ready writer," but with the judgment of the lawyer whose zeal is tempered with sound discretion,—he has well discharged his important and anxious duty.

We regret that our limits permit us to transcribe but a small part of the defence. After many important observations on the case in general, and the questions before the Court, Mr. Warren enters upon each charge *in utrumque*. We select his summary on the first, but which involves the most serious of all. The others are incidental, and comparatively of trifling importance.

"The first charge is that of WILFUL SHOOTING, in having, when asked by Colonel Renier, on the 8th January, 1849, whether I had a knowledge of the persons or persons who had been firing ball on the ramparts of Longy Battery on the 5th January, answered that I had no knowledge of such persons or persons, *well knowing, at the time I made that answer, that I myself had been firing ball on those ramparts on that day.*

"Does any member of this honourable Court, does any other person present; can any one who has heard the proceedings, or any one who has ever known me, believe that I did tell a most disgraceful falsehood? If this Court believe it, and their belief be shared by the authorities at the Horse Guards, then, indeed, I must be driven from her Majesty's service and with blighting ignominy. I have scarce patience to argue on this point. I trust that this Court bears in mind the Duke of Wellington's opinions, which I read to you at the commencement of my defence. Has

this terrible charge been made with due consideration? Was Renier subjected to a rigid examination? To ascertain whether it was possible, or probable, that he was *mistaken*? That his knowledge of English was imperfect; that he spoke daily in French, and gave his evidence in French before the Civil Court on the very occasion in question? Was Judge Gandon referred to, in order to ascertain his opinion as to Renier's competency to understand the exact import of expressions in English? Was Renier asked whether he had made any memorandum at the time? No! Colonel Le Mesurier had an interview with him, which, he says, did not last two minutes, during which he 'merely asked him if what he had said was true!' Was inquiry made, whether any one else was present to confirm him? Was I applied to, to know what account I gave of the matter? Why not, if Colonel Le Mesurier '*would have believed me on my honour*?' The Court is in possession, at this moment, of no more information than Colonel Le Mesurier could easily have obtained from the beginning, had he required it, with the slightest exertion, if he had been, alas! so inclined! Here, then, is the deliberate word of an officer and a gentleman called in question, and falsehood deliberately imputed to him, on a casual expression of an illiterate man, only imperfectly acquainted with English, and speaking so indistinctly (I appeal to the whole Court) whilst first giving his evidence here, that no one could hear or understand him without great difficulty; and the Deputy Judge-Advocate even talked of an interpreter! Did not Renier mislead us all, for a moment, by using the word '*the end*' of the wall, when he meant at '*the bottom* of the wall?' My own notes of what fell from him are quite in confusion, in spite of all my exertions, but he certainly said that he had asked me if I knew who had been firing. Then he said he asked me if I knew 'who had done it,' and explained that he meant 'had been firing.' Now, the words 'who had done it' are inapplicable to the inquiry 'who had been firing,' but quite proper to elicit an answer to the question doubtless uppermost in the constable's mind, namely, 'who had shot the bullock?' And this Court will recollect, that when Ensign Parker and I met at dinner soon afterwards, on the same evening, I told him, that such was almost the exact question Renier had actually put to me; or, according to Ensign Parker's recollection, on my then hearing him say that Renier had told him a bullock had been killed round by the battery, and had asked if he *knew anything about it*, I said 'the constable has been to me, and asked me whether I knew anything about the death of the bullock.' Does the Court believe me so insane and wicked as to have then deliberately falsified to my own junior officer, the words which I had an hour or so, before, heard from Renier? I hope the idea will be scouted as monstrous. The Court already knows my own distinct version of what really passed between Renier and me; and I need not repeat

that I adhere to it. If it were not wasting time (but for the gravity of the charge, and respect for those who placed it in the first rank of the accusations, and ordered it to be inquired into) I would say that it is very possible that Renier intended to put the question 'who had been firing?' but that, from nervousness, or confusion of thought, or some other cause, he forgot it; and asserting the firing as a fact, really asked the question which he knew was the one to be discussed, as Judge Gaudin has told us was the fact, the next day in Court, namely, '*who had shot the bullock?*' Or is it possible that Renier may have mixed up the two questions under the ambiguous one '*who had done it?*' He may still really believe that he distinctly asked me the question represented in the charge; but he *most certainly did not*; or, if I can possibly be mistaken on the matter, which I do not believe, and he *did* ask that particular question, I protest that I did not hear or understand him to do so, nor imagine that I was answering any such question, whether in the negative, or otherwise. It will be recollected that Colour-Sergeant London mentions that, about the time in question, he saw Renier at the barracks, and all the latter said was, 'that a bullock had been shot near the barracks.' I will neither impute to Renier, nor insinuate the imputation of, an intention to deceive. He is evidently an obtuse, and probably an obstinate man; but certainly he is a very inaccurate observer, or has a very bad memory, as I have proved before the Court, in several instances in which he was point-blank contradicted. He most positively told you, for instance, that he never saw Colonel Le Mesurier on the subject of this supposed falsehood, nor spoke to him a word about it! Yet the Colonel assures us directly to the contrary!—that Judge Gaudin sent Renier to him, and he asked Renier whether what he had said was true, and he answered that it was! How could Renier have *forgotten* so unusual a circumstance as his being sent by the Judge of the Island, to the Town-Major, on a subject of so much importance, involving the honour and veracity of an officer second in command in the island? What can his memory be worth?

"Again, he distinctly stated here, that he knew Mr. Parker, and did not ask him if he were Mr. Parker. I called that gentleman, who as distinctly contradicted him! Again, he told us, that Mr. Parker asked him '*if the bullet had been found?*' and Mr. Parker denies that he asked any such question. It is true, that, through mere inadvertence, I forgot to put it specifically to Mr. Parker. It is, however, the fact, and is so established on the proceedings; for Mr. Parker tells us what actually passed, adding, 'that is ALL that passed,' and he does not mention one word, such as the constable had put into his mouth, and which was intrinsically improbable under the circumstances. Again, having asked Mr. Parker if he knew anything about the bullock which had been shot, Renier himself added: 'I told him I was going up to the Captain to inquire, for the same

purpose.' Again, the Court may recollect my inquiring, whether, in so critical a matter, he had enabled himself to speak confidently to precise expressions, by making a memorandum of our conversation. At first he said he had done so, but when closely pressed, he said that the only memorandum he had made was of the *dates*! so that he is now speaking solely from memory, imperfect as it is, after an interval of nearly two months and a half; and so confused in his evidence on this point, that I am unable to find out *when* he really made this precise 'memorandum.' To me, that evidence seems to show that he had made, and used, and destroyed, his memorandum, several days before it was actually in existence! Finally, he stated positively, and circumstantially, that my two children were with me when he called upon me. I pressed him there, because I perfectly well knew he was stating what was not the fact, for I distinctly recollected being alone, and that the children were with Mrs. Douglas in the drawing-room, as has been, to some extent, corroborated by Ann Caffrey, the nurse. Is then *this* a witness—the *sole witness*—whose word is to be set against mine, and on which my honour is sought to be blighted for ever? Had it been even a gentleman, and who spoke positively, and without motive to deceive, would not the Court prefer accounting for the discrepancy between us on the ground of *mistake*, rather than of wilful falsehood, *on either side?* which is precisely how the Commander-in-Chief recommends such cases to be dealt with. But I have yet more conclusive reasons to offer the Court on this subject, to show that I *must* be right, and Renier every way wrong, and to establish the uniform consistency of my conduct with truth. The two answers which have constantly asserted, and still assert, gave to Renier on the 8th January, viz., that did not know who had shot the bullock, and that I could not be accountable for newspapers with my name—were the *very identical answers* I gave to Judge Gaudin on the next day! What a cogent presumption arises from this circumstance, that, as the *ANSWERS* were *identical*, so must have been the *QUESTIONS* of the two persons eliciting them! But I will go farther, and make this as clear as daylight and prove that the questions put by Renier *must* have been those which I assert they are. Judge Gaudin never sent him to ask any others—and I will prove that he did not and could not have done so. He told this Court the object of his Court on the 9th January—he gave the two questions he put to me—a also said that he did *not* ask *who had been firing* at Longy; and assigned a conclusive reason for not doing so—that is, that he did not consider it judicious, at that stage of the proceedings; that they were not ripe enough for it; because Bisset had given 'a strong intimation' that *we* had shot the bullock. Now, if he, *withstanding*, *did* send Renier to ask me so had been firing at Longy, he would have *disproved* his own reasoning, and done, by another, what he would not do himself, by sending a mes-

senger to entrap me into answering a question, which he had deemed it improper to put to me himself! Therefore, it is demonstrated, that Renier was really sent to ask the two questions I answered; and it is also perfectly clear, from the general tenor of his evidence, that such was the fact; and his own statement to the contrary is either a blunder, or an invention, and a mere *after thought* of his the next day, for what reason I need not inquire. And here I leave this foul imputation for ever—as, before a Court of Honour, especially, annihilated; and with it, the first charge against me.”

It is manifest that the matter cannot rest here. The public has long complained of the want of a regular tribunal of appeal in criminal cases, the demand has been partly conceded, and will be, ere long, fully established. Amidst all the changes in our laws and the practice of our Courts, there is still a strong and irresistible love of justice, which must ultimately prevail; and whilst many efforts are now made to give the poorest man a cheaper if not a better remedy than heretofore, all Courts throughout the kingdom must be reformed and adapted to the purposes of truth and justice. Courts Martial cannot be passed over, and we anticipate that, whilst the public attention will be drawn to the injustice of the remarkable case before us,—and we hope to its due redress,—a change will be effected that will hereafter prevent such extraordinary injustice as appears to have been inflicted upon the Officer whose case we have thus felt it our duty to consider.

NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

COSTS OF DISTRAINING FOR HIGHWAY RATES.

12 VICT. c. 14.

An Act to enable Overseers of the Poor and Surveyors of the Highways to recover the Costs of distraining for Rates.

[11th May, 1849.]

1. 43 *Eliz. c. 2*, 5 & 6 *W. 4*, c. 50.—*Where a warrant of distress is granted for a poor rate or highway rate, &c., the costs of obtaining it may also be levied.*—Whereas provision is already made by law for the recovery of the sum or sums at which any person is rated or assessed to the relief of the poor, or is rated or assessed in any rate for the highways, in England or Wales, by distress and sale of his goods and chattels, and in default of such distress by commitment to prison until the same shall be paid; but no provision is made for levying the costs and expenses incurred by the overseers of the poor or the surveyors of highways in the recovery of the same respectively: Be it therefore enacted by the Queen's

most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That it shall be lawful hereafter for all justices of the peace, if in their discretion they shall so think fit, in any warrant of distress they shall make and issue for the levying of any sum or sums to which any person or persons is or are now or may hereafter be rated or assessed in or by any rate or assessment for the relief of the poor or for the highways in England or Wales, or in or by any other rate or assessment which by law now or hereafter is or shall be directed to be enforced or recovered in the same manner as a poor rate, or in any warrant for the levying of any arrears of the same, to order that a sum, such as they may deem reasonable, for the costs and expenses which such overseers or surveyors, or the persons applying for such warrant, shall have incurred in obtaining the same, shall also be levied of the goods and chattels of the person or persons against whom such warrant shall be granted, together with the reasonable charges of the taking, keeping, and selling of the said distress.

2. *Imprisonment in default of distress.*—43 *Eliz. c. 2.*—*So much of 43 Eliz. c. 2, as relates to commitments for nonpayment of rates, or for default of distress, repealed.*—Power to order imprisonment not exceeding three months in default of distress.—And whereas by an act passed in the 43 *Eliz.*, intitled “An Act for the Relief of the Poor,” it is amongst other things enacted, that in default of distress for a poor rate it shall be lawful for two justices of the peace to commit the party against whom the distress warrant shall have issued to the common gaol of the county, there to remain without bail or mainprize until payment: And whereas it is desirable to limit the time within which a person assessed to a poor rate, or any other of the rates or assessments aforesaid, may be imprisoned for nonpayment of the same: Be it therefore enacted, That so much of the said recited act as relates to the commitment of any person to the county gaol for nonpayment of any poor rate, or for default of distress whereon to levy the same, shall be and the same is hereby repealed; and every person now undergoing any such imprisonment under or by virtue of the said recited act, shall be discharged from such imprisonment so soon as he or she shall have been imprisoned three calendar months, or shall sooner pay the sum or sums with which he or she is charged; and that hereafter, when to any warrant of distress for the levying of any sum or sums to which any person or persons is or are now or may hereafter be rated or assessed in or by any rate or assessment hereinbefore mentioned it shall be returned by the constable or person having the execution of such warrant that he could find no goods or chattels, or no sufficient goods or chattels, whereon to levy such sum or sums, together with the costs of or occasioned by the levying of the same, it

shall be lawful for any two or more justices of the peace before whom the same shall be returned, or for any two or more justices of the peace for the same county, riding, division, liberty, city, borough, or place, if in their discretion they shall so think fit, to issue their warrant of commitment against the person with relation to whom such return shall be so made as aforesaid, in the form (D.) in the schedule to this act annexed, or in any form to the like effect, and thereby order such person to be imprisoned in the common gaol or house of correction for any time not exceeding three calendar months, unless the sum or sums therein mentioned shall be sooner paid; and every such warrant of commitment made or issued for default of distress as aforesaid shall be made as well for the nonpayment of the costs and expenses so as aforesaid incurred in obtaining such warrant of distress, if the same shall be so ordered as aforesaid, and the costs attending the said distress, and also the costs and charges of taking and conveying the party to prison, (the amount of such several costs, expenses, and charges being stated in such warrant of commitment,) as for the nonpayment of the sum or sums alleged to be due for the said rates respectively.

3. *One warrant may be issued against several rate-payers; but otherwise as to a commitment in default of distress.*—And be it enacted, That for the saving of expense in the levying of any sum or sums for rate and costs as aforesaid it shall be lawful to make and issue one warrant of distress against any number of persons neglecting or refusing to pay the same, in the form in the schedule to this act annexed; but nothing herein shall be deemed or construed to authorise justices in like manner to grant or issue one warrant of commitment against several persons in default of distress as aforesaid.

4. *To whom warrants of distress or commitment to be directed.*—And be it enacted, That the warrants aforesaid may be directed to the churchwardens and overseers of the poor, or the overseers of the poor, or the surveyors of the Highways respectively, and to the constable of the parish or township, and to any other person or persons, or to any one or more of them, as by the justices granting the same shall be deemed fit.

5. *Summons, and how served; if not obeyed, the justices may proceed *ex parte*.*—And be it enacted, That every summons to be issued against any person for nonpayment of any sum for which he or she is or shall be so rated or assessed as aforesaid shall be directed to such person, and may be in the form (B.) in the schedule to this act annexed, or in any form to the like effect; and the same may be served by any churchwarden or overseer of the poor, or surveyor of the highways, respectively, or constable or other person, to whom it shall be delivered for that purpose, upon the person to whom it is so directed, by delivering the same to the party personally or by leaving the same with some person for him or her at his or her last

place of abode; and the person who shall serve the same in manner aforesaid shall attend at the time and place and before the justices in the said summons mentioned, to depose if necessary to the service of the said summons; and if, upon the day and at the place appointed in and by the said summons for the appearance of the party so summoned, such party shall fail to appear accordingly in obedience to such summons, then, and in every such case, if it be proved upon oath or affirmation to the justices then present that such summons was duly served as aforesaid a reasonable time before the time so appointed for his or her appearance as aforesaid, it shall be lawful for such justices of the peace in their discretion, if they shall so think fit, to proceed *ex parte*, in the same manner to all intents and purposes as if such party had personally appeared before them in obedience to the said summons.

6. *On payment or tender of rate and costs proceedings to cease.*—And be it enacted, That in all cases where any proceedings have been or shall hereafter be taken to compel payment of any sum for which any such person is or shall be so rated or assessed as aforesaid, if at any time before such person shall be committed to and lodged in prison for nonpayment thereof, or for or by reason of its being returned to such warrant of distress as aforesaid that there are no goods or chattels or no sufficient goods or chattels of such person whereon the same may be levied as aforesaid, such person shall pay or tender to the churchwardens or overseers of the poor, or any of them, or to the surveyor of highways respectively, or other person authorised to collect or receive such rate, the sum so sought to be recovered, together with the amount of all costs and expenses up to that time incurred in the proceedings so taken to compel payment thereof as aforesaid, then and in every such case the person to whom such sum and costs shall be so paid or tendered shall receive the same, and thereupon no further proceedings for the recovery of the same shall be had or taken.

7. *Costs already recovered or proceeded for deemed legal.*—And be it enacted, That in all cases where such costs and expenses as aforesaid shall have been paid and received, or any proceedings taken or imprisonment had for nonpayment of the same, such payment and receipt, and such proceedings or imprisonment, shall be deemed legal to all intents and purposes, and no action or other proceeding shall be had or proceeded in for or in respect of the same.

8. *Forms in schedule valid.*—And whereas it may be convenient, and save expense and litigation, if forms to be used for the purpose of levying the sums aforesaid should be given: Be it enacted, That the forms in the schedule to this act contained, or forms to the same or the like effect, shall be deemed good, valid, and sufficient in law.

9. *Imprisonment for nonpayment of church-rate limited.*—And whereas it is desirable to limit the time within which a person assessed

to a church-rate may be imprisoned for non-payment of the same: Be it enacted, That every person now undergoing any such imprisonment shall be discharged from such imprisonment so soon as he or she shall have been imprisoned three calendar months, or shall sooner pay the sum or sums which he or she is charged; and that hereafter no person shall be imprisoned for the nonpayment of any church-rate for any time exceeding three calendar months.

INCORPORATED LAW SOCIETY.

ANNUAL GENERAL MEETING.

THE Annual General Meeting of this Society took place on Wednesday, the 13th inst., B. Austen, Esq., President, in the chair. A full report of the proceedings of the past year was read by the Secretary, received, approved, and directed to be printed.

The Members of the Council going out of office in rotation were re-elected. Mr. Clarke, (the Solicitor to the Ordinance,) was elected President; and Mr. Harrison, (of Gray's Inn,) Vice-President. The two vacancies occasioned by death and resignation were supplied by Mr. Edward White and Mr. Joseph Maynard. Mr. T. C. Abbott, Mr. Anderton, and Mr. B. B. Armstrong were elected Auditors of the accounts of the Society.

A new bye-law was passed, authorizing the Council, on their own motion as well as upon the requisition of three members, to convene a meeting of the Society on complaints of malpractice against members.

Several motions were made to alter the bye-laws:—by rendering the members of the Council going out of office ineligible for re-election for 12 months;—to reduce the admission fee of town members from 15*l.* to 5*l.*, and of country members from 10*l.* to 3*l.*;—and to abolish the second ballot for the club; but they were negatived.

The thanks of the Meeting were voted to the President, the Vice-President, and Council, for their continued attention to the interests of the Society and their valuable services in behalf of the profession.

SELECTIONS FROM CORRESPONDENCE.

COUNTY COURT CHARGES.

"A Young Attorney" states, the same paid by "Ignoramus," (p. 81, ante) for fees in an

action for 12*l.* odd, in the Bloomsbury County Court, may be explained as follows, viz.:—

Summons fees—

	£.	s.	d.
General fund—1 <i>s.</i> in the £. on, s. d.			
(say) 12 <i>l.</i> 10 <i>s.</i>	12	6	
Judge	3	0	
Clerk	3	0	
Bailiff—service within one mile	1	0	
Bailiff—service, (say) two miles extra, at 4 <i>d.</i>	0	8	
	1	0	2

Hearing fees—

	s.	d.
Judge—hearing without jury	10	0
" judgment	3	0
" order	3	0
Clerk—hearing	2	0
" judgment and order	5	0
" swearing, (say) 1 witness	0	6
" taxing costs	2	0
Bailiff—calling cause	1	0
" service of order within 1 mile	1	0
" " 2 miles extra, at 4 <i>d.</i>	0	8
	1	8
Total	2	8

PUBLIC ROADS BILL.

"A Turnpike Commissioner" says, that it appears somewhat objectionable that the Metropolitan and Provincial Law Association should urge, as a serious and fundamental objection to the lately proposed Public Roads Bill, that "*the present clerks were to go out of office without compensation.*" (Vide p. 63, ante). The case of creditors was to be most grossly interfered with; and in his opinion it would have been more noble had the Association taken up the cause of their clients.

The worthy "Turnpike Commissioner" cannot be surprised that the Committee of a Law Society should notice the wrongs of their brethren, and we are sure that they have never neglected the interests of the public, which they always hold to be identical with their own.

NOTES OF THE WEEK.

CONTINUED INDISPOSITION OF THE LORD CHANCELLOR.

THE Lord Chancellor's illness is of such a nature as to render it improbable that he will be able to take his seat in the Court of Chancery before the long Vacation. Rumours are again prevalent of an intention to put the seals temporarily in commission. The Commissioners named are,—Lord Langdale, Lord Campbell, and Mr. Baron Rolfe; but no official announcement has yet taken place.

CHANCERY SITSING AFTER TERM.

The branches of the Court of Chancery, as well as the Court of the Master of the Rolls,

ait, as of old, at Lincoln's Inn after Term,—very much to the convenience of the Junior Bar and the practitioners generally.

COMMON LAW SITTINGS AFTER TERM.

The Common Law Courts have all commenced their Sittings after Term, under Lord Denman's Act, (1 & 2 Vict. c. 32). The Court of Exchequer has given notice, that motions and applications "then pending," will be disposed of at the after-sitting, as well as new trials, special cases, and demurrers. It has been doubted whether this extension of the business of the after-sitting was contemplated by those who framed the 1 & 2 Vict., but the language of the act appears to be sufficiently comprehensive to justify the course proposed to be adopted. The *Nisi Prius* business of the Common Law Courts, as our readers are already aware, is unusually heavy, and will continue to afford full occupation until the period fixed for the commencement of the several circuits.

GRAY'S INN.—EXAMINATION FOR HONOURS.

The Benchers and Members of this Society met on Tuesday, the 12th instant, and the following gentlemen were declared to have distinguished themselves in the voluntary examination for honours in the Law of Real Property, on Thursday, the 7th instant:—

1. Mr. George Horsey, of Gray's Inn.
2. Mr. John Stewart Cumming, and Mr. W. Whittaker Barry, of Lincoln's Inn, *æq.*
3. Mr. Richard Denny Urling, of the Middle Temple.
4. Mr. Thomas Halhed Fisher, of Lincoln's

Inn, and Mr. Henry Lushington Phillips, of the Middle Temple, *æq.*

5. Mr. Robert Hallett Holt, of Lincoln's Inn.

We think that these exertions for the improvement of the Candidates for the Bar are highly creditable to the Benchers of Gray's Inn. They are (in the phrase of the day) "proceeding in the right direction." The present Benchers are the worthy successors of Lord Bacon and Sir Samuel Romilly, the illustrious Members of that "ancient and honourable Society."

DEPUTY CORONER FOR WESTMINSTER.

Frederick Langham, jun., Esq., has been appointed Deputy Coroner for the city and liberty of Westminster, by Mr. Charles St. Clair Bedford, Coroner for the district.

CIRCUITS OF THE JUDGES.

The Assizes will commence on the 9th July at Abingdon; at Hertford and Winchester on the 10th; at Northampton, York, Cardiff, and Oxford on the 11th; at Aylesbury on the 12th; at Lincoln, Newtown, Worcester, and Dorchester on the 14th; at Bedford and Chelmsford on the 16th.

The Circuit Paper will be given in in the next number.

STATUS OF ATTORNEYS.

We have received two answers to the letter on the "Status of Attorneys," at page 102, *ante*, which we shall insert in our next number. We reluctantly gave publicity to the letter of "An Attorney," for we did not agree with his view of the case.

RECENT DECISIONS IN THE SUPERIOR COURTS

AND SHORT NOTES OF CASES.

House of Lords.

O'Brien v. Reginam, M'Manus v. Reginam.
May 10, 11, 1849.

WRIT OF ERROR.—HIGH TREASON.

Upon writ of error from the Court of Queen's Bench, Ireland, held: 1st, That the statement in the caption that the commission had been executed by three commissioners was not made uncertain by the further statement that the commission included others besides the three judges: 2nd, That the plaintiffs in error were not entitled to a copy of the indictment and list of witnesses as of right—the 86 G. 3, c. 7, not extending to Ireland; 3rd, That the levying war, &c., in Ireland was treason under the 25 Edw. 3, c. 2, which was extended to Ireland by Poynsing's acts: 4th, That the omission of the words "of death" in the allocutus

why the Court should not pronounce judgment was immaterial.

Quære, whether, if the plaintiffs in error were entitled to a copy of the indictment and list of witnesses, the objection of non-delivery could be made the subject of a plea.

THE writs of error in these cases were brought to reverse the judgment of the Irish Court of Queen's Bench on a writ of error against the judgment pronounced against the appellants. The objections taken in the writs of error were—1st, That by the caption of the indictment it did not appear there was any jurisdiction in the judges before whom the prisoner was tried so to try and convict him; 2nd, That a declaratory plea pleaded by the prisoner, claiming a right to the delivery of copies of the indictment and jury panel and the list of witnesses, ten days before arraignment, was held to be bad on demurrer, and the de-

murrer to that plea was allowed, (25 Edw. 3, c. 32; 7 W. 3, c. 3; 7 Anne, c. 7; 36 G. 3, c. 7; 57 G. 3, c. 6; 11 & 12 Vict. c. 12); 3rd, That by the effect of Poyning's Act, the statute of Edward 3, regarding treason, was not extended to Ireland; and 4th, That the *allocutus*, in which the prisoner was asked what he had to say "why the Court should not give judgment against him," was defective from the omission of the words "of death."

Sir Fitzroy Kelly, Napier, and Sir Colman O'Loghlen for Mr. O'Brien; O'Callaghan, Seager and M'Mahon for Mr. M'Manus; The Attorney-General, The Irish Attorney-General, Welsby, and Peacock for the Crown.

The Lord Chancellor having stated that the learned judges were unanimously of opinion that the writs of error could not be supported, the Attorney-General was stopped, and the following question submitted to the judges,— "Whether the plaintiffs in error had maintained the errors assigned?"

The judges having withdrawn, upon their return their opinion was read by

Wilde, L. C. J. The first objection was founded on the facts disclosed in the caption that the commission had been executed by three commissioners nominated for that purpose, acting under a commission directed to them and others. The judges were of opinion that the statement of the appointment was sufficient, and not made uncertain by the further statement that the commission included others besides the three judges. The second question involved two points,—1st, whether a prisoner indicted for high treason was entitled as of right to a copy of the indictment and a list of the witnesses ten days before trial; and 2ndly, whether that objection was properly made the subject of a plea. They were of opinion that the plaintiffs in error were not so entitled, and it was therefore unnecessary to consider whether the objection of non-delivery could be made by a plea. The right was put on the provisions of the 36 G. 3, c. 7, which it was contended the acts 57 G. 3, c. 6, and 11 & 12 Vict. c. 12, extended to Ireland, but they were unanimously of opinion that the 36 G. 3, c. 7, was in no way operative in Ireland. The next objection, that the counts of the indictment charging a levying of war, &c., in Ireland, did not contain any offence known to the law, also failed. The 25 Edw. 3, c. 32, which declared the offence there charged to be treason, was extended to Ireland by Poyning's acts. The next objection, which applied to the *allocutus*, also failed. The objection as to the challenges had been very properly abandoned in the argument.

The judges having agreed unanimously in their opinion, the Lord Chancellor moved that the judgment of the Court below for the defendant in error should be affirmed. Lords Lyndhurst, Brougham, and Campbell having expressed their concurrence with the opinion of the judges, judgment was given for the defendant in error.

Molls' Court.

Brooks v. Grenfell and others. May 29, 1849.

MORTGAGE DEED.—CONSTRUCTION.—INJUNCTION TO RESTRAIN SALE.

Upon construction of a mortgage-deed, which provided that the mortgagees were not to sell or give notice of sale, unless half a year's interest was in arrear for two calendar months, an injunction to restrain the sale where the interest was so in arrear was refused, with costs.

THIS was an application for an injunction to restrain the defendants, and all persons claiming under them, and their auctioneers, &c., from selling or offering for sale a certain property called the East Cowes Park Estate, situate in the Isle of Wight. The defendants were mortgagees for 14,000*l.*, and upwards, of the hereditaments and premises in question, under a mortgage deed, which provided that they should not sell or give notice of sale, unless and until six calendar months' notice, in writing, had been given, requiring payment of their money, and default in payment thereof; or unless and until six months' interest should be in arrear for two calendar months. The interest being in arrear two calendar months, the defendants, in January, 1849, gave notice of their intention to sell.

Elderton, in support of the application, contended that it would be disadvantageous to sell the property in London at this time of the year, and also in one lot, and that the defendants were bound to give six calendar months' notice of their intention to sell, notwithstanding the amount of arrears of interest.

Turner and Campbell, contra.

The Master of the Rolls held, that, upon construction of the clauses in the mortgage deed, the mortgagees had power to sell the property, in the event of there being an arrear of interest, without notice. The application must, therefore, be refused, with costs.

June 6.—Attorney-General v. Wiggston Hospital—Stand over for production of evidence.

—6.—Howell v. Chambers—Stand over to sitting after Term.

—7.—Attorney General v. Corporation of London—Proceedings stayed for one month, to allow defendants time to appeal to the Lord Chancellor—Costs of application to be costs in the cause.

—7, 8.—Cohen v. Wilkinson and others—Demurrer overruled.

—8, 9, 11.—Dickinson v. Grand Junction Canal Company—Order by consent as to experiments respecting the sinking of a well near a stream supplying the plaintiff's paper mills.

—11.—Scott v. Handy—Application refused to dismiss bill for want of prosecution.

—12.—Cohen v. Wilkinson and others—Cur. ad. vult.

Vice-Chancellor of England.

Blair v. Cuthbertson. May 5, 1849.

SETTLEMENT ON MARRIAGE OF WARD OF COURT.

Held, that as the intended husband of a ward of Court was a widower with three children, and his income depended on his profession, no settlement could be required to be made, the lady's property having been settled to her for life, and after her death to her husband for life, with remainder to the issue of the marriage.

THIS cause came on upon exceptions to the Master's report, as to whether a settlement would be required to be made by the intended husband by means of an insurance on his life, on the marriage of a ward of Court. It appeared that the gentleman was a widower with three children, and had a mere income of 3,000*l.* derived from his profession, and that the lady had property producing about 700*l.* a year. The lady's property had been settled to her separate use, and after her death, for her husband for life, and then to the issue of the marriage. A suggestion was also made as to the disparity of ages.

Stuart, Bethell, and Glasse for the several parties.

The Vice-Chancellor said, that the age of the husband was not to be considered. The gentleman was a widower with three children, and a part of his income was, of course, required for their support. As the lady's property had been already settled on her, the husband could not be required, under these circumstances, to make any further settlement on the marriage.

June 8.—*Shadbolt v. Thornton*—Stand over.

—9.—*Cradock v. Piper*—Order for review of taxation of trustee's costs, who was a solicitor, on the ground that he had been only allowed the costs out of pocket, under an order for taxation of costs between solicitor and client.

—7, 11.—*Turner v. Turner*—Order for appointment of new receiver, and the former one to pass his final accounts—Costs to be costs in the cause.

—12.—*Sharp v. Goodman*—Special injunction restraining railway company from dealing with fund in Court without notice.

Vice-Chancellor Knight Bruce.

In re the Oxford and Worcester Extension and Chester Junction Railway Company, Ex parte Morrison, May 4, 1849.

ABORTIVE RAILWAY COMPANY.—WINDING-UP ACT.

Order made for winding-up railway company in accordance with the decision of the Lord Chancellor, in Ex parte Barber, in re the London and Manchester Direct Independent Railway Company, 37 L. O. 492.

THIS petition was presented under the 11 & 12 Vict. c. 45, and prayed that the affairs of the company might be wound up under the provisions of that act. It appeared that the company was projected in 1846, and proved wholly abortive, the railway bill having been thrown out for non-compliance with the standing orders. At a meeting of the shareholders, the dissolution of the company was resolved upon, but no fiat in bankruptcy had issued against the company. This petition was served on one of the managing committee, but it was wholly unopposed.

Cornes, in support of the petition, urged that, as several actions had been brought against the petitioner by parties having claims on the company, the order for winding-up should be made.

The Vice-Chancellor said that, although in his opinion railway companies were not within the 11 & 12 Vict. c. 45, yet as the Lord Chancellor had decided in the recent case of *Ex parte Barber, In re the London and Manchester Direct Railway Company, 37 L. O. 492*, that they were within the act, the petition for winding-up would be granted.

Order accordingly.

June 6.—*Ex parte Barnewell, in re Biddulph*—Petition dismissed so far as seeking to diminish or expunge proof, the rest to stand over, and the dividend upon proof to be brought into Court and accumulate until further order.

—6.—*Rogers v. Price*—Bill to be retained for 12 months, with leave to plaintiff to bring action—Injunction to be continued in meantime. If no action brought within a year, or if unsuccessful, bill to be dismissed, with costs not exceeding 40*l.*

—7.—*Dyer v. Ayling*—Injunction restraining defendant from acting as assistant in chemist's shop under an agreement.

—7.—*In re St. George Steam Packet Company*—Motion to reverse Master's certificate, under Winding-up Act, excluding a person from list of contributories, refused with costs.

—8.—*In re London and South Essex Railway Company*—Stand over for additional affidavits to be filed.

—8.—*In re the Direct Exeter, Plymouth, and Devonport Railway Company*—Order for winding up the company.

—8.—*In re the Parish of St. Thomas the Apostle, London*—Order for investment of proceeds of sale of property in the name of the churchwardens, overseers, and rector of the parish. Petition to stand over to Michaelmas Term, with leave to rector to institute proceedings to establish his claim to property.

—8.—*In re Great Munster Railway Company*—Stand over.

—8.—*In re South Midland Junction Railway Company*—Stand over to enable the petitioner to see the accounts.

—9.—*Habersham v. Vardon*—Reference to the Masters as to voidness of will for uncertainty.

— 12.—*Ex parte the Rector of Ihton, in re London and Birmingham Railroad Company*—Order for payment out of Court *residue*.

WILLS' ACT.—CONSTRUCT.

An article had been published in the *Mona's Herald* and *Fargher's Isle of Men Advertiser*, on the 24th January last, with reference to the Court of Chancery of the island, and which that Court considered to be a libel, and cited the editor to appear. Mr. Crawford, a Scotch solicitor, then visiting the island on business,

declared himself to be the author, whereupon the Court committed him as well as the editor, for contempt, the warrant stating them to be imprisoned "till further order." The editor being in a weak state of health, presented a petition to the Court, and apologized for his conduct, and was released, but Mr. Crawford refused to do so, alleging that he had been illegally imprisoned—the warrant having been issued three days after the commitment. An application was made, after Mr. Crawford had been three months in prison, for a writ of *habeas corpus*, which Mr. Justice Patteson granted. A rule *nisi* had been obtained to quash the writ, on the ground that the writ did not run to the Isle of Man.

Peacock in support of the rule; *Archbold*, contra.

The Court said, that since the stat. 5 Geo. 3, c. 26, which vested the island in the Crown, a writ would run into that island, whatever might have been the case before. As the commitment was in the nature of a punishment, some definite period should have been stated in the warrant, but it appeared from the affidavit of the clerk to the council of that island, that this warrant was in the usual form in which commitments for contempt are made out in the island, and however grievous it might be, the Court could not interfere, because the commitment had been made by a Court of competent jurisdiction, and was not void on the face of it according to the law of the island. This Court was not a Court of Appeal from the Manx Court of Chancery, if the form of the warrant was erroneous. The rule to quash the writ of *habeas corpus* must, therefore, be made absolute.

June 6.—*Regina v. Purham*—Cur. ad. vult.

— 6.—*Regina v. Blane*—Stand over.

— 6.—*Regina v. Rigby*—Cur. ad. vult.

— 6.—*Regina v. Mott*—Judgment for defendant on mandamus to deliver up seal of office of the Lichfield County Court, on the ground that it was held for life and not during pleasure.

— 7.—*Scott v. Ferris*—Rule to set aside verdict on the ground of irregularity, discharged.

— 8.—*Regina v. Bickley*—Rule for new trial discharged.

— 8.—*Regina v. Kendall*—Rule for new trial discharged.

— 9.—*Regina v. Baptist Missionary Society*—Order of Sessions confirmed holding that the society was liable to pay rates.

— 9.—*Robinson v. Waddington*—Rule absolute for new trial on the ground of misdirection.

— 11.—*In re the Town Clerk of Lichfield, ex parte Simpson*—Rule absolute for mandamus to corporation to pay an annuity awarded by the Treasury, as compensation under the Municipal Corporation Act.

— 11.—*Jordan v. Bickley*—Rule on Sheriff of Middlesex to send in a return to a writ of *f. fa.*, discharged with costs.

— 1.—*Regina v. Bythersee and Justices of Somerset*—Rule absolute for *damus* (officer of union to pay expenses of pauper natic whose settlement to be in the union.

— 11.—*Spencer v. Great N. Railway Company*—Rule discharge; an inquiry of bring up order to be taken.

— 11.—*In re the Orton Vicarage*—Cur. ad. vult.

— 11.—*Yina v. Ingham and another, Justices of the Riding of Yorkshire*—Rule *nisi* for summons to proceed with the hearing of evidence a summons.

— 12.—*Yina v. Great Western Railway Company, re Ross*—Rule for mandamus on company allow bondholder inspection of books, discharged with costs.

— 12.—*Regina v. Kendall and others*—Sentence on persons convicted for sale of East India opium.

— 12.—*In re Cooke v. Londonderry and Coleraine Railway Company*—Cur. ad. vult.

Queen's Bench Practice Court.

Coram Wightman, J.)

Doe do—v. *Roe*. May 23, 1849.

SERVIOF EJECTMENT.—PRACTICE.

Held, *that the declaration in an action of ejectment must be actually served upon the parties in possession, and a rule for judgment against the casual ejector was refused when such was not the case.*

THIS was an application for judgment against the casual ejector in an action of ejectment. Appeared from the affidavit of the party who had the charge of serving the declaration, that the tenants in possession were a widow and her son, and that he called at the house in question, which was in the country, and served the son; but that, whilst he was explaining the nature of his business to the widow, as before he had served her, his horse ran away and he was obliged to leave to go after it. Upon his return to the house, he found the door shut and the window-curtain drawn, whereupon he pushed the declaration through hole in the window, and saw it fall on the widow's sill.

T. Chambers, in support of the rule, contended that this was a good service.

The Court, however, held, that as the affidavit did not state that the notice in ejectment had been actually served upon the widow, the rule must be refused.

June 6.—*In re Tristram*—Stand over.

— 6.—*Regina v. Riley*—Rule for *procedendo* discharged with costs.

— 1.—*Regina v. Justices of Warwick*—Rule absolute, without costs, on justices to issue warrant to levy paving rates.

— 7.—*Regina v. Lincolnshire, &c., Free Press Newspaper, ex parte Moore*—Rule *nisi* for

criminal information on proprietor of newspaper for libel.

— 8.—*Regina v. North-Western Railway Company*—Rule calling on directors of railway company to make a return to writs of mandamus commanding them to empanel a jury to assess compensation.

— 9.—*Brough v. Isenberg*—Rule nisi to set aside *distringas* issued, and all subsequent proceedings.

— 9.—*Worsley v. South Devon Railway Company*—Rule nisi to quash inquisition to assess compensation for lands taken by railway company, on the ground that the undersheriff was the attorney for the company and a shareholder.

— 11.—*Regina v. Corporation of Exeter*—Rule nisi for mandamus on corporation to make compensation for having removed a party from the office of wharfinger.

— 12.—*In re Hillcoat*—Rule absolute.

Common Pleas.

Bailey v. Wilkins. May 28, 1849.

PAYMENT OF CALLS BEFORE TRANSFER OF SHARES.

Held, that an action for money paid to the defendant's use by a stockbroker who had paid certain calls, would lie against the defendant, who had authorized him to purchase shares at 30s. discount, it appearing that by the custom of the Stock Exchange the vendee's broker was liable for the same, and that under the 5 Vict. c. 16, s. 16, a transfer could not be made before the calls were paid.

THE plaintiff in this action, which was brought to recover a sum of 40l. on a count for money paid to the defendant's use, was a London stock and share broker, and had been commissioned by the defendant, who resided at Swansea, to purchase 20 shares in the Vale of Neath Railway at 30s. per share discount. The plaintiff accordingly, on the 30th March, 1848, bought of a Miss Bennett the shares, and paid 10s. upon each share. A call of 2l. per share was due at the time of the purchase, which Miss Bennett, on the 31st March, paid, amounting to 40l.; and the 9th April the broker repaid her that sum. It appeared that by the rules of the Stock Exchange, the vendor of shares has a right to pay calls in arrear at the time of the purchase, and to require the vendee to repay the calls so paid, which the broker, if the vendee fails so to do, must pay, upon pain of being expelled from the Stock Exchange. At the trial, which took place at the Guildhall Sitings after Hil. Term, 1848, before Wilde, C. J., a verdict was returned for the plaintiff, with leave reserved to apply for a rule to enter a nonsuit. A rule having been accordingly obtained,

Byles, S. L., and Phina, now showed cause against the rule; *Chassell, S. L.,* in support of the rule.

The Court said, that the object of the defendant was to obtain the shares with the de-

duction of 30s. upon the 2l. which had been paid, and the authority to the broker must be taken to have been a contract to pay any call required to be paid, in order to make the transfer valid, subject to the one limitation of buying at 30s. discount from the amount paid. According to the rules of the Stock Exchange, and the 8 Vict. c. 16, s. 16, calls must be paid upon shares before a transfer is made, and the vendor's broker therefore paid the call and was repaid by the vendee's broker. The plaintiff was therefore entitled to recover the sum so paid to his use, and to retain his verdict, and the rule must be discharged.

June 6.—*Kinnersley v. Knott*—Judgment for defendant on demurrer on the ground of the insertion of an initial instead of the full name in the declaration.

— 6.—*Dimes v. Wright*—Rule refused to rescind judge's order setting aside interlocutory judgment.

— 6.—*Doe dem. Brammall v. Collings*—Judgment for lessor of plaintiffs in ejectment.

— 6.—*Hankin v. Smith*—Rule to bring in record by 11th June, or judgment for defendants on issue of *nul tiel* record.

— 7.—*Keighley v. Goodman*—Cur. ad. vult.

— 8, 9.—*Smith v. Thompson*—Rule discharged for new trial.

— 9, 11.—*In re Garbett*—Cur. ad. vult.

— 12.—*Bewick v. Capper*—Rule absolute for a prohibition to County Court on the ground of want of jurisdiction.

— 12.—*Wylde v. Harris*—Rule in arrest of judgment discharged.

Court of Exchequer.

Chapman v. Oppenheim. May 7, 1849.

JUDGE OF SHERIFFS' COURT IN LONDON.—CERTIFICATE ON RECORD.—SUGGESTION TO DEPRIVE OF COSTS.

Held, that the Judge of the Sheriffs' Court in London had no power to certify under a writ of trial directed to him from the Superior Court, that the cause was a proper one to be tried in the Superior Court.

A RULE nisi had been obtained for leave to enter a suggestion to deprive the plaintiff of costs, under the 9 & 10 Vict. c. 95, s. 129, upon the ground that the action ought to have been brought in the County Court. A writ of trial had been directed to the Judge of the Sheriffs' Court in London from the Superior Court, and Mr. Commissioner Bullock, the judge of that Court, had certified on the back of the record, that the action was fit to be brought in the Superior Court.

Argy in support of the rule; *Charnock, contra.*

The Court held, that the Commissioner had no power to certify under the 129th section of the 9 & 10 Vict. c. 95, and that, therefore, the rule must be discharged with costs.

June 6.—*Seamen's Hospital v. Mayor, &c. of Liverpool*—Judgment for the plaintiffs for

payment over of penalties under 7 & 8 Vict. c. 112, s. 62.

— 6.—*Smith v. Dimes*—Rule absolute to tax attorney's bill on the ground that the 6 & 7 Vict. c. 73, s. 37, applies to agency bills.

— 6.—*Machintosh and another v. Michelson*—Rule for new trial discharged.

— 7.—*Tinkler v. Hilder*—Rule to set aside judge's order for stay of proceedings discharged with costs, on the ground that the plaintiff, by receiving costs under the order, had adopted it.

— 7.—*Shropshire Union Railway Company v. Smith*—Rule absolute to set aside demurrer as frivolous.

— 7.—*Halliwell v. Eastwood*—Rule *nisi* to quash return to certiorari, and for County Court judge to amend the return.

— 7.—*Mayhew v. Cooke*—Rule *nisi*, upon leave reserved, to set aside verdict and enter it for defendant.

— 7.—*Sligh v. Sligh*—Rule *nisi* to set aside verdict and enter nonsuit, or for a new trial on the ground of misdirection.

— 9.—*Gall v. Lindsay and another*—Rule absolute to enter nonsuit.

— 9.—*Wakley v. Cooke and another*—Part heard.

— 12.—*In re Hammersmith Bridge Rent Charge*—Rule discharged to set aside order made under 6 & 7 W. 4, c. 71, s. 82.

Nisi Prius.

(Coram Coleridge, J.)

Elliott v. Thompson. May 15, 1849.

SLANDER.—VARIANCE IN DECLARATION AND EVIDENCE OF WORDS SPOKEN.

The plaintiff in an action of slander, for words spoken at an inquest on a fire, set

out in the declaration, that the defendant had said that he entertained strong suspicion of some one having had a hand in the mysterious affair; and that the plaintiff was the person who had done it. It appearing from the evidence that the plaintiff's name had not been mentioned: Held, a fatal variance; and the Court refused to amend the declaration, but nonsuited the plaintiff.

THE plaintiff was a livery stable-keeper carrying on business in George Yard, Drury Lane, and landlord of the defendant, who was a stationer, &c., resided in King's Head Court, Fetter Lane. It appeared that on the night of the 30th August, 1848, a fire broke out on the defendant's premises, and that an inquest for the purpose of inquiring into the origin of the fire, was held by Mr. Payne. The inquest was adjourned several times, and on the 6th September the defendant said, that he had a strong suspicion that "some one had had a hand in this mysterious affair." The plaintiff was acquitted on the inquest from all blame.

One of the jurymen and a short-hand writer present at the inquest, proved that the defendant had not mentioned the plaintiff by name, although he had said that he suspected some one who had set the premises on fire.

Williams, S. L., and Huddleston, for the plaintiff; *M. Chambers, Q. C., and Meymott*, for the defendant, contended, that inasmuch as there was a variance between the evidence and slander alleged in the declaration, which set out that the defendant had added the words, "and Mr. Elliott is the person who had done it," to those above stated, the plaintiff ought to be nonsuited.

The Court held that this variance was fatal—refused to amend the declaration, and the plaintiff was nonsuited.

BUSINESS OF THE COURTS.

COMMON LAW SITTINGS.

Common Pleas.

This Court will, on Tuesday the 19th day of June inst., and on every succeeding day, (Sunday excepted,) until and inclusive of Monday the 25th day of June inst., hold Sittings, and will proceed in disposing of the business now pending in the Special Paper, and in the Paper of New Trials, and will also proceed to give judgment in certain of the matters that will then be standing over for the consideration of the Court.

THOMAS WILDE.

Exchequer of Pleas.

After Trinity Term, 1849.

IN MIDDLESEX.

Wednesday June 13 Common Juries.
Thursday . . . 14 Customs & Common Juries.
Friday . . . 15 }
Saturday . . . 16 } Common Juries.
Monday . . . 18 }
Tuesday . . . 19 }

Wednesday . . . 20 }
Thursday . . . 21 }
Friday . . . 22 } Special Juries, (and Com-
Saturday . . . 23 } mon Juries, if necessary.)
Monday . . . 25 }
Tuesday . . . 26 }

MR. LONDON.

Wednesday June 27 } Adjournment Day, Com-
mon Juries.

Thursday . . . 28 }
Friday . . . 29 }
Saturday . . . 30 } Common Juries.
Monday . July 2 }
Tuesday . . . 3 }

Wednesday . . . 4 }
Thursday . . . 5 }
Friday . . . 6 } Special Juries, (and Com-
Saturday . . . 7 } mon Juries, if necessary.)
Monday . . . 9 }
Tuesday . . . 10 }

The Court will sit at 10 o'clock.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, JUNE 23, 1849.  
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AMENDMENT OF JOINT-STOCK COMPANIES' WINDING-UP ACT.

A BILL has been introduced into the House of Commons by the Solicitor-General, to amend the 11 & 12 Vict. c. 45,—the provisions of which it is declared are to be construed, (so far as practicable,) as a part of the Joint-Stock Companies' Winding-up Act of 1848.

As our readers are already aware, (see *ante*, p. 23,) the Lord Chancellor and Vice-Chancellor Knight Bruce differed, nearly at the outset, as to whether the act of last Session was applicable to railway companies or not, the Lord Chancellor holding, upon appeal, in the case of *Ex parte Barber*, in *re the London and Manchester Direct Railway Company*,^a that railway companies were within the act; and Vice-Chancellor Knight Bruce, in a more recent case,^b although he felt bound to act in conformity with the judgment of the Chancellor, distinctly intimated that he still retained the opinion that railway companies were not included. The Solicitor-General's bill proposes to get rid of all doubts on this point by enacting, "That, notwithstanding anything in the said act contained importing a more limited application thereof, the same shall apply to all partnerships, associations, and companies, whereof the partners or associates are not less than six in number, whether incorporated or unincorporated, and whether formed or subsisting before or after the passing of the said act or this act."

The proposed alterations are not meant to be confined to a legislative declaration of the classes of cases to which the new

system of winding-up joint-stock companies is to be applied. It is intended to supply some defects which have already been discovered in the machinery created by the act of last Session, and so far as can be judged of a measure so complicated and novel, and in respect to which the experience of any individual must necessarily be limited, the amendments now proposed seem to be judicious, and, with one or two exceptions, unobjectionable.

Every one is sensible that, when publicity is necessary, the *London Gazette*, although frequently the only legal medium, is in effect a very insufficient vehicle for the announcement of facts with which it is desirable any considerable portion of the community should be acquainted. It is now proposed, therefore, that every petition for dissolution or winding-up under the act of last Session shall be announced, not only in the *Gazette*, but in two daily morning newspapers.

The powers of the Master as to the withdrawal, increase, or diminution, of the securities of official managers are proposed to be extended, with a proviso that the Master is not to allow the total amount of the recognizances of all the sureties of any official manager for the time to fall short of the sum in which such official manager is bound.

There are various enactments also proposed with reference to the nature and amount of the remuneration to the official and provisional manager, which is left, to a certain extent, in the discretion of the Master, the maximum, however, being declared at 5 per cent. when the estate divided amongst creditors or contributories does not exceed 100,000*l.*; 4 per cent. when the estate divided does not exceed 200,000*l.*; and 3 per cent. when the estate divided exceeds 200,000*l.*

^a Reported 37 Leg. Obs. 492.

^b In *re the Oxford and Worcester Extension, Ex parte Morrison*, *ante*, p. 132.

Power is also proposed to be given to the official manager, to draw, accept, and indorse any bill of exchange or promissory note, and also to raise money upon the security of the assets of the company in such manner as the Master shall direct; and where more than one official manager is appointed, the acts of one is to bind the other, in the same manner as the acts of an assignee of a bankrupt bind his co-assignees.

With respect to the remuneration of the official manager's solicitor, the bill contains the following provision:—

"That it shall be lawful for the Master to make or allow any agreement which he may think fit from time to time with respect to the remuneration of any attorney or solicitor to be appointed by the official manager, and that such remuneration may be either by way of per-centage or otherwise."

A considerable proportion of the cases which have already come before the Courts upon the construction of the act of 1848,^c relate to the insertion of persons as contributories in the list prepared by the official manager, and not a few questions have arisen as to the meaning of the word *contributory* as used in the act. Touching this matter, the new bill proposes to enact—

"That the word 'contributory' as used in the said act with respect to the parties who are to attend the proceedings before the Master, and to the representation of classes of contributories being minors or lunatics, and to the appointment by the Master of next friends, guardians, or representatives, and with respect to determining and resolving questions of law or of fact, or matters in contest arising in or about the winding-up of the affairs of any company, shall be taken to include alleged contributories."

"That if any contributory be a bankrupt or insolvent, such contributory shall be entitled to attend by his assignees, and in all proceedings under the said act shall be sufficiently represented by such assignees."

"That, as between the contributories or alleged contributories, the lists of contributories, and all other lists required by the said act, as the same shall have been prepared by the official manager, and before the same shall have been settled by the Master, shall be *prima facie* evidence of the truth of all matters therein contained and purporting to be therein recorded."

A very important alteration is also proposed with respect to the power of the Master to make calls on contributories, having at the same time regard to the

probability that some of the contributories may fail in meeting the whole or any part of the calls. Under the 11 & 12 Vict. c. 45, s. 84, after the amount necessary to be raised was determined by the Master, he was bound to apportion it among the persons then determined to be contributories, according to their respective liabilities. This section is now expressly repealed, and in lieu thereof it is proposed to enact,—

"That when the Master shall think proper to raise any money by means of a call, he shall make such call from time to time upon the contributories of the company, or any of them, appearing for the time being on the list of contributories, although it may then be under consideration, or uncertain, whether other persons ought or ought not to be included in the list, and in making any such call it shall be lawful for the Master to fix such an amount per share for the same as shall in his judgment be likely to supply and bring the whole sum for the time being intended to be raised, after taking into consideration the probability that some of the contributories upon whom the said call shall be made should partly or wholly fail to pay their respective proportions of the same."

The new bill also contains a provision, in which country practitioners are especially interested, appointing District Commissioners of Bankruptcy and County Court Judges in England, and Commissioners of Bankruptcy and Assistant Barristers in Ireland, Commissioners for summoning and examining witnesses and receiving evidence under this act. The section is as follows:—

"That the District Commissioners of the Court of Bankruptcy and the Judges of the County Courts in England, and the Commissioners of Bankruptcy and the Assistant Barristers in Ireland, shall be and they are hereby appointed Commissioners for the purpose of taking and receiving evidence under the said act and this act; and it shall be lawful for the Master, by any order under his hand, to refer the whole or part of the examination of any witnesses under the said acts to any such Commissioner, although such Commissioner be out of the jurisdiction of the Court by which the order absolute was made; and every such Commissioner shall, in addition to any power of summoning and examining witnesses, and requiring the production or delivery of documents, and certifying or punishing defaults by witnesses, which he might lawfully exercise as a District Commissioner of the Court of Bankruptcy, Judge of a County Court, Commissioner of Bankruptcy, or Assistant Barrister, have and exercise, in the matter so referred to him, all the same powers of summoning and examining witnesses, and requiring the production or delivery of documents, and certifying or punishing defaults by witnesses, and allowing costs and charges to witnesses, as are given by the

^c See *ante*, p. 23, where all the decisions are collected.

said act or this act to any Master charged with the winding up of any company under the same."

The power given by the act of 1848, to summon other persons to show cause why their names should not be included, is explained and extended in the new bill by the following section :—

"That the power by the said act given to contributories to summon any other person to show cause why his name should not be included in or specially excluded from the list, and the power of the Master to declare such person included in or excluded from the list, shall and may be exercised from time to time so long as the list has not been wholly settled, although the person so to be summoned have been already included or specially excluded (as the case may be) as respects any other share or interest in the company than the share or interest in respect of which he is proposed to be included in or specially excluded from the list."

With respect to payments to the Suitors' Fund, upon proceedings under the Winding-up Acts, a provision is suggested in this bill, the principle of which is well deserving of consideration in other cases. It is proposed, that in lieu of all fees to be received in aid of the Suitors' Fee Fund in respect of any proceedings, or other matter under the act, a per-centage is to be paid into the Bank of England to the credit of the Suitors' Fund, calculated upon the moneys divided amongst the creditors or the contributories of the company, at the rates following, that is to say :—10s. per cent. upon the first moneys so paid and divided, not exceeding 50,000*l.* Five shillings per centum upon all further moneys above 50,000*l.* and not exceeding 100,000*l.* Three shillings and four-pence per centum upon all further monies above 100,000*l.* and not exceeding 200,000*l.*, and one shilling and three-pence per centum upon all further moneys exceeding 200,000*l.* The experiment is novel and the per-centage, it must be admitted, is not excessive.

Some difficulty was found from the almost inevitable irregularities produced by the difficulty of ascertaining christian names, &c., which is provided for in the subjoined section :—

"That no service under the said act shall be deemed invalid by means of the christian name or any of the christian names of the person upon whom service is sought to be made having been omitted, or designated by initial letters, in the list of contributories, or in the summons, notice, order, or other document wherein the name of such contributory is contained, and

that any summons, notice, order, or other document sent by post shall be pre-paid, except so far as the rules of the post-office shall not allow of pre-payment; and that in proving any such service by post it shall not be necessary to show that the document was not returned."

By the last section, to which we deem it necessary to call attention, power is given to the Lord Chancellors of England and Ireland respectively, to make all such rules and orders, as from time to time shall seem necessary or expedient for better carrying into effect the purposes of the act of last session or of this act.

As we have already had occasion to observe, the act of 1848 was an important experiment, the value or expediency of which can scarcely be said to be yet ascertained. We could have wished that the machinery provided by the former act had been more fully tested before any amendment was proposed; but it is to be hoped that the provisions now proposed will be sufficient to obviate some of the most obvious difficulties which have presented themselves in carrying this important measure into effect.

THE PALACE COURT AND THE COUNTY COURTS' ACT.

THE Attorney-General, since our last publication, has given notice of his intention to introduce a bill for the amendment of the County Courts' Act, in which he proposes to insert certain clauses relating to the Palace Court jurisdiction. He has also announced his intention to submit the claims of the Palace Court officers and practitioners to compensation to the consideration of a Select Committee. The Palace Court is a matter of limited inquiry, which may, perhaps, be safely dealt with during the present Session; but no alteration should be made in the jurisdiction or practice of the County Courts, without affording the profession and the public an ample opportunity of becoming acquainted with the proposed changes, and, if necessary, expressing an opinion upon them.

The bill the Attorney-General proposes to bring in has not yet been printed, and it would be premature to anticipate its scope or objects. We can only promise that, as soon as a copy can be procured, our readers shall be made acquainted with its provisions.

Much discussion has taken place on the subject of the compensation to be made to

the judge, the barristers, attorneys, and officers of the Court. According to every precedent in similar cases of the abolition of offices, due compensation should be allowed. On a former occasion, on the diminution of the business of the Court by the operation of one of the Law Reform Acts, a considerable compensation was paid to the practitioners and officers. But since the establishment of County Courts, in which the suitors are in general compelled to attend personally, (in consequence of the inadequate costs allowed for professional assistance,) the business of the Palace Court has largely increased. Alter, then, the County Courts to meet what is evidently the want of the public,—give concurrent jurisdiction, and then the Palace Court will find its right position. But to abolish it now without due compensation would be gross injustice, and to afford the public no Court but the County Court would be a denial of justice to those who cannot personally attend, or are virtually not allowed professional assistance.

LAW OF TITHES.

EXEMPTION BY COMPOSITION.—EVIDENCE.

IN the recent case of *Toynbee v. Brown, clerk*,* a question was tried under the 6 & 7 W. 4, c. 71, s. 46, whether the plaintiff's lands were exempted from tithes by reason of a composition or annual payment.

The lands were in the parish of Howell and the manor of Howell, and were, together with the advowson of the church of Howell, conveyed in 1653 to S. Edmonds, G. Smith, W. Dennys, and W. Morse, in trust for S. Edmonds, his heirs and assigns for ever, with a covenant for quiet enjoyment by them as against the parson of Howell and his successors, and others claiming any common. In 1653, S. Edmonds filed a bill in Chancery against A. Popham, the patron of Howell and one of the parties to the indenture, and Thomas Row, the then parson, rector, and incumbent of Howell; wherein, after reciting that A. Popham and Thomas Row had agreed that he should hold the said manor, lands, &c., freed and discharged from any claim or demand to be made for tithes or composition or glebe lands; and that Thomas Row should accept of 80*l.* yearly, in full lieu and satisfaction of all tithes and other

demands; and that A. Popham and Thomas Row did agree and conclude and consent to a decree to be obtained against them by S. Edmonds, for the establishing of the said agreement;—prayed relief, &c.

Popham and Row, by their answer, confirmed the agreement, the latter confessing that he was willing and ready to accept the said sum of 80*l.* in full lieu and satisfaction for all demands of tithes and common, and praying that there might be a decree reciprocally to establish and confirm the said agreement and premises, and accordingly, in 1654, the exchange and agreement were confirmed. The plaintiff, who claimed under S. Edmonds, was the owner of the advowson of Howell and of the largest part of the lands in Howell. The Rev. Henry Handley Brown, the defendant, was instituted and inducted into the incumbency in 1840. The annual sum of 80*l.* had been actually paid to the rector for the time being of Howell for the space of 60 years before the appointment of the defendant, and for three years since. A terrier, dated 1822, and signed by the incumbent and churchwardens for the time being and by the legal owner of the lands, stated, as one of the rights of the incumbent, "the tithes of the whole parish with Easter offerings, for which the rector receives a composition of 80*l.* per annum, free from parochial and other rates and assessments."

Wilkes appeared for the plaintiff, cited *Salkeld v. Johnson*, 18 Law J., Exch., 89; *Thorpe v. Mattingley*, 2 Y. & C. 421; *Tickle v. Brown*, 4 A. & E. 369.

Whitehurst, for the defendant, cited *Wynniatt v. Lindon*, 8 Law J., Ch., 121; *Clay v. Shackera*y, 2 M. & R. 244.

The Court held, first, that as for 60 years 80*l.* had been paid for tithes, no weight was due to the language of the terrier, whereby it appeared that by reason of the exemption from rates more than 80*l.* had been in fact paid by the parishioners; 2ndly, that the 80*l.* having been expressly paid and received as a modus or composition for the tithe only, the modus was valid and indefeasible, although the rector's abandonment of his claim of common had formed part of the consideration for making the payment; 3rdly, that the bill and answer contained no proof that the agreement between the lord of the manor and the incumbent to pay and receive 80*l.* a year as a composition for tithe was in writing; that the bill, even if such an agreement were stated therein, would not be evidence against the lord of the manor and those

claiming under him, nor would the answer be evidence for the incumbent. Lastly, that to take the payment of a modus for 60 years out of the operation of the 2 & 3 W. 4, c. 100, s. 1, by virtue of a *consent or agreement in writing*, such consent or agreement must be for the payment of that very modus during all or some part of that time, and that by a person who could otherwise have objected to the payment; and therefore, that the modus was good.

UNITED LAW CLERKS' SOCIETY.

ANNUAL MEETING.

THE seventeenth anniversary festival of this society took place on the 19th instant, at the Freemasons' Tavern. Sir F. Pollock, the Lord Chief Baron, took the chair, and was supported by Mr. Bethell, Q. C.; Mr. Humfrey, Q. C.; Mr. Butt, Q. C.; Mr. Charles Dickens; Mr. Gordon (the Lord Rector of the Marischal College of Aberdeen); the Sheriff of Edinburgh; and many eminent members of the Bar and Solicitors.

After the usual loyal toasts,

The *Chairman*, in proposing the toast of the evening—"Prosperity to the United Law Clerks' Society,"—congratulated the meeting upon the progress the society had made since he last presided eight or nine years ago. Such a meeting as this, assembled for such a purpose, was well becoming the profession to which they belonged—a profession of which every member of it had reason to be proud. It was well known that in our Courts of Law, under the auspices of our most eminent lawyers, the great battles of freedom had been fought. It was to this circumstance that we were indebted for the constitution under which we live, and which enabled us to enjoy security and peace amid the struggles and convulsions which existed in other countries. He dwelt with much eloquence on the excellent objects of the society, and on the important services rendered by the Law Clerks in the important business of the profession. He abridged his remarks, for the purpose of allowing time for what he trusted would be the longest speech of the evening—the announcement of subscriptions!

The *Secretary* then read the report, which we shall in a future number state at large, and for the present may notice that if any member, from advanced age, blindness, or any other infirmity, be totally prevented from earning his livelihood, he is entitled to receive for life, by weekly payments, an allowance varying yearly from 26*l.* to 36*l.* 8*s.* There are at present four members receiving this allowance. On the death of a member, his family are entitled to a sum of 50*l.* Of the cases of illness before adverted to, four terminated in death. Four other cases of death have also occurred, and the families of these eight members have received together the sum of 400*l.* If a member survive

his wife, he is entitled, on her decease, to a sum of 25*l.* During the year, four such cases have happened. A sum of 424*l.* has been expended in relieving members who required temporary aid. On the 20th of May, 1848, the total investments amounted to 10,320*l.* 5*s.* 8*d.*; on the same day in this year they amounted to 11,330*l.* 14*s.* 7*d.* The contributions of the members alone during the year have exceeded 1,200*l.*

Mr. *Bethell* ably proposed the "Health of the Lord Chief Baron," as an eminent lawyer, a distinguished scholar, a polished gentleman, and, as shown by his presence that day, a kind and benevolent man.

The toast was received with great enthusiasm, and the Chief Baron feelingly returned thanks.

Mr. *Humfrey* proposed "The Lord Chancellor, Lord Lyndhurst, and the other patrons of the society." He came forward to introduce this toast to their notice with mingled feelings of pleasure and regret—of pleasure, that the present Lord Chancellor was one of the distinguished patrons of this society; and of regret, that his health was not in that state in which his friends could desire. It was an interesting fact well deserving of mention on this occasion, that it was exactly 45 years since the two great leaders of two great parties in the state—Lord Cottenham and Lord Lyndhurst—began their career at the Bar, and each had risen by his perseverance and industry to the highest position a man could attain in that profession.

Mr. *Goodeve* returned thanks.

The *Chairman* proposed the health of "Mr. Charles Dickens." In adopting this toast they would be doing homage to genius. Mr. Dickens was one of the profession. He was a member of the Middle Temple. He half regretted the day they made him (the Chief Baron) a judge, and drove him from that society, because he left Mr. Dickens behind. It would be a waste of words on his part to enlarge upon the merits of that gentleman. It was sufficient to pronounce his name, for his genius was felt in all their breasts—his glowing words were in their memory, and found their way to every man's heart.

Mr. *C. Dickens*, in returning thanks, said he was deeply sensible of the warmth and earnestness of the welcome he had received this evening, and of the distinguished compliment which had been paid to him by the Lord Chief Baron. He had been requested to propose a toast upon this occasion, and he did not know for what reason, unless it were that he was a law student without ever having studied the law, or that he once had the honour of being connected with a case, which was an action for breach of promise of marriage—and which was was only reported in one book—a case in which he confessed that the pleading, the evidence, the summing up, and the verdict were all equally wrong. He was extremely glad to be present, because it afforded him an opportunity of entering into personal explanations. Some

time ago a gentleman had written to him stating that he thought he (Mr. Dickens) had been "rather hard" upon the profession, and it would be an agreeable sacrifice to offended justice if he would come here and confess that he did not mean what he said. He was now ready to plead to that accusation. Mr. Dickens then made some amusing observations upon the subject of pleading, and facetiously alluded to the character of *Dick Sciveller*, as connected with the law.

He concluded by proposing "The Bar and the Profession."

Mr. *Ballantine* returned thanks.

The *Chairman* then proposed "The Lord Rector of the Marischal College, Aberdeen, the Sheriff of Edinburgh, and the other strangers present," to which

The *Lord Rector* responded in very gratifying terms towards the founders of the Institution, which had his most hearty good wishes.

Mr. *Charles Clark* proposed "The Honorary Stewards," which included Dignitaries of the Church, the Bench, the Bar, and the other branch of the Profession—all testifying their interest in the welfare of the Society.

Mr. *Bramwell* returned acknowledgments on the part of the Honorary Stewards, who were glad to promote the objects for which the meeting had assembled.

The last toast, "though not the least in the affection" of the meeting,—the Ladies—was well proposed by Mr. *Butt*, and answered by Mr. *Bolland*.

The subscriptions amounted to 420*l*.

BANKRUPT LAW CONSOLIDATION.

THIS Bill, now before a Select Committee of the House of Commons, will probably undergo some modifications which will further improve it, and then we hope it will pass. The alterations desired by the profession are, we believe, as follow:—

1. That in the clauses relating to the arrangements with creditors by deed, the proportion of assents should be six-sevenths instead of nine-tenths.

2. That the levying a *bond fide* execution should not be deemed an act of bankruptcy.

3. That the office of official assignee should be changed to that of treasurer, and his duty confined to receiving and securing the fund, and that he should be paid by a fixed salary, or by a smaller per centage. At present his emoluments frequently exceed the salary of the Commissioner.

4. That the messenger should perform no part of the duties which belong to the solicitors, particularly as to notices; and that he should be paid by a moderate salary instead of a per centage, which frequently exceeds the salary of a registrar of the Court.

ATTORNEYS' CERTIFICATE DUTY.

THE time approaches for the discussion of this unjustifiable tax, and we hope there will be a full attendance of all those who are willing to give the subject a fair consideration. A large proportion of our readers are acquainted with Members of the House, and should inform them of the merits of the case, and urge their personal attendance at the House. We observe that already a large number of petitions have been presented from various parts of the country by their respective Representatives, and the remainder will make their appearance on the day appointed for the debate,—Tuesday, the 3rd July.

STATUS OF ATTORNEYS.

To the Editor of the Legal Observer.

SIR,—Perhaps you will permit me, a clerk under articles through "the pernicious system" adverted to by the writer of a letter under the signature of "An Attorney," inserted in your journal of the 9th instant, to make a few remarks in answer to the most extraordinary and unwarrantable conclusions which he infers from the system alluded to.

Without inquiring into the cause of what he calls the "unenviable position" in which, as a class, the attorneys stand, and which he seems so much to deplore, I conceive it will be sufficient for my purpose to show that it does not originate in the reason he has endeavoured to find out, and which he seems to think he has discovered.

Why, Sir, judging from his letter, ignorant persons might believe that it is quite the rule for attorneys to give their managing clerks articles of clerkship, instead of this practice being, as is the fact—a very great exception. For a confirmation of this, I should like much, were it possible, to appeal to the list of candidates for examination during any given Term, and to have a return of the number of persons who become candidates in consequence of "the pernicious system." Doubtless, such a return would at once produce a change of opinion in the mind of your sorrowful correspondent. Nay, Sir, I doubt not that the returns for many Terms would disclose not one solitary example of the system alluded to.

Now, Sir, I am one of those described by "An Attorney," coming from a family with no means whatever, (in the sense I understand him,) with no better education than learning to read and write, and having entered an attorney's office at the age of 14 as a clerk, or, if your correspondent prefers it, an office boy, subjected to the drudgery of an office, but not to the performance of any menial services that I remember; and being such, I most readily concede that a youth who has received a good education and mixed in good society must in-

evitably possess advantages over a youth who, it may be, leaves a charity school to enter an attorney's office. But does the latter stand no chance of improvement? Is the natural disposition of no avail? Is he to pick up all the evil and none of the good? Surely, years of daily and constant association with those who have been liberally educated is something in his favour. If high and honourable feeling is displayed by his principal, the chances are, that when he leaves his principal (perhaps after a connexion of from 15 to 20 years) he will carry those feelings along with him. For good or for evil, examples, it is said, are contagious, and it may be pretty safely concluded that if such a man becomes a "scamp" in the profession, it is because he was brought into it by a scamp.

"An Attorney" admits that he is very severe. Sir, I say he is more,—he is unjust: he, by an insinuation as illiberal as untrue, would have it appear that the scamps of the profession are almost wholly, if not wholly, composed of those who enter it under what he designates "the pernicious system." I have, Sir, been in the profession for more than 20 years, and from my position in it for many years past have, perhaps as great a knowledge of it generally as "An Attorney;" and I confidently aver, that for one charity scamp 20 could be named who are the production of a from 300 to 500 guineas premium. Education will not altogether alter the nature of a man,—the real nature may appear less on the surface, but still it will be there. It is very probable that "An Attorney," who is evidently of the silver fork school, may have received some rough treatment from the drudgery men, but has he not also met with trickery from the man of polished manners and gentle exterior?

But surely, Sir, a respectable solicitor would not give a clerk his articles and pay him a salary during his services without some consideration. This consideration would doubtless be—the clerk's good character—his long and faithful services combined with his ability and aptitude for his professional duties. Are not the probabilities much in favour of the supposition that such a character is not very likely to swell the ranks of the scamps? "An Attorney" may rely upon it that it is not these men who overcrowd the profession. They are a mere drop in the well. All professions are overcrowded. The medical profession (without the aid of doctors' boys) is overcrowded. Inquire in Scotland Yard. Now, Sir, what does overcrowd the profession? I have been endeavouring to find this out, and, like "An Attorney," I think I have succeeded. Is it not the great desire entertained by wealthy and respectable merchants, tradesmen, and others, to make their sons attorneys because the profession is genteel? and this but too frequently without the slightest regard to the abilities, either natural or acquired, of their beloved offspring for such a vocation? This, Sir, I believe to be the true cause.

I have very little fear of the legislature adopt-

ing the aristocratic course suggested by "An Attorney;" nor do I believe that the great majority of attorneys desire to see an impassable barrier placed against the honourable, and I trust not presumptuous, ambition entertained by a few clerks of becoming members of a profession of which they have for many long years been worthy servants.

A PAID ARTICLED CLERK.

SIR,—I have read with mingled feelings of surprise and regret the letter of "An Attorney," in your last number, upon the "*Status of Attorneys*," and I confess that as I read, a crimson glow suffused my cheeks, but it was not the blush of shame—it was that of indignation—that an attorney who ought to be a gentleman, and therefore "liberal minded," (to use your correspondent's own expression,) should be so unjust and ungenerous as deliberately to sit down and pen the libel which he has prevailed upon you to publish. He knows that the managing clerks are not the "scamps" he describes, and that if some of them are occasionally deemed worthy by the liberal-minded attorney of the gift of articles with a salary, it is generally after long previous servitude, and founded upon the experience of the mental and moral qualifications of the clerk, which the master whom he has faithfully and honourably served is desirous, and perhaps has no other means, of rewarding.

I must contend that men who possess sufficient ability, energy, and integrity to raise themselves from the ranks of the profession, (so to speak,) cannot with any justice be stigmatised as "scamps," and that they are not the men who "diagnose" the profession;—that they add to its numbers no one can deny. It is also equally true that the managing clerks do not mix with the highest society, nor do I think the attorneys themselves are always to be found in it, but I do contend that they may be, and are, actuated by feelings equally high and honourable with those which exist in the breast of their better educated, and therefore more fortunate employers.

Again, I deny that the managing clerks are sought for or obtained from the charity schools; and I confess the "Attorney" who possesses (as I have a right to assume your correspondent does, although his composition is by no means pure or classical,) all the advantages which an enlarged, and perhaps a university, education confers, added to the courteous and gentlemanly bearing which mixing in the good society where only (I again assume) your correspondent has passed his life, must be lamentably deficient in capacity, if (as he alleges) he is "prevented from making a living" because, forsooth, with all his advantages, he is not a match for the "*men who have risen from the drudgery of the office*," and who have received their education from a charity school.

I should not have troubled you with these remarks, but that I belong to the class of men

which this "illiberal" attorney has thus foully aspersed. I am not, Mr. Editor, ashamed to avow that, after serving many years in an attorney's office as a salaried clerk, I am now under articles, with a stipend which enables me to support myself and to contribute to the wants of a severely afflicted mother. This part of my history (if I am spared) I shall not later in life be ashamed to acknowledge, for it does appear to me honourable alike in him who bestows and in him who receives such a reward for long and faithful services.

Allow me to add for the information of the "Attorney," the following list of illustrious lawyers who were all of very humble origin, viz.:—Sir John Strange, Lords Roden, Kenyon, Ashburton, and Hardwicke, all of whom were attorneys' clerks who served writs and ingrossed deeds; and Lord Chief Justice Saunders, who was taught to write by some attorneys' clerks in the Temple. To them might be added many distinguished judges in our own time, whose names are well known to your readers.

A. Z.

CIRCUITS OF THE JUDGES.

Denman, L. C. J., will remain in Town.

NORFOLK.

Wilde, L. C. J., and Coltman, J.

Thursday, July 12, Aylesbury.
Monday, July 16, Bedford.
Thursday, July 19, Huntingdon.
Friday, July 20, Cambridge.
Wednesday, July 25, Norwich and City.
Tuesday, July 31, Ipswich.

HOME.

Pollock, L. C. B., and Alderson, B.

Tuesday, July 10, Hertford.
Monday, July 16, Chelmsford.
Monday, July 23, Maidstone.
Monday, July 30, Lewes.
Monday, August 6, Croydon.

MIDLAND.

Parke, B. and Coleridge, J.

Wednesday, July 11, Oakham and Northampton.
Saturday, July 14, Lincoln and City.
Wednesday, July 18, Nottingham and Town.
Friday, July 20, Derby.
Tuesday, July 24, Leicester and Borough.
Friday, July 27, Coventry.
Saturday, July 28, Warwick.

NORTHERN.

Patteson, J., and Wightman, J.

Wednesday, July 11, York and City.
Wednesday, July 25, Durham.
Monday, July 30, Newcastle and Town.
Thursday, August 2, Carlisle.
Monday, August 6, Appleby.

Wednesday, August 8, Lancaster.
Saturday, August 11, Liverpool.

NORTH WALES.

Maule, J.

Saturday, July 14, Newtown.
Wednesday, July 18, Dolgelly.
Friday, July 20, Carnarvon.
Wednesday, July 25, Beaumaris.
Saturday, July 28, Ruthin.
Wednesday, August 1, Mold.
Saturday, August 4, Chester and City.

SOUTH WALES.

Platt, B.

Wednesday, July 11, Cardiff.
Tuesday, July 17, Carmarthen.
Saturday, July 21, Haverfordwest and Town.
Wednesday, July 25, Cardigan.
Saturday, July 28, Brecon.
Wednesday, August 1, Presteign.
Saturday, August 4, Chester and City.

OXFORD.

Rolfe, B., and Erle, J.

Monday, July 9, Abingdon.
Wednesday, July 11, Oxford.
Saturday, July 14, Worcester and City.
Thursday, July 19, Stafford.
Thursday, July 26, Shrewsbury.
Tuesday, July 31, Hereford.
Friday, August 3, Monmouth.
Tuesday, August 7, Gloucester and City.

WESTERN.

Cresswell, J., and Williams, J.

Tuesday, July 10, Winchester.
Saturday, July 14, Dorchester.
Wednesday, July 18, Exeter and City.
Wednesday, July 25, Bodmin.
Tuesday, July 31, Bridgewater.
Monday, August 6, Devizes.
Saturday, August 11, Bristol.

BARRISTERS CALLED.

Trinity Term, 1849.

LINCOLN'S INN.

June 8.

Fountain Hastings Elwin, Esq.
Edward Thomas Wakefield, Esq., B. A.
John Julius Stutzer, Esq., M. A.
John Henry Brazier, Esq., M. A.
George Smoult Fagan, Esq., B. A.
Hooper John Wilkinson, Esq., M. A.
William Edward Jones, Esq., M. A.
Philip Henry Pepys, Esq., M. A.
Samuel Scott, Esq.
Frederic Wildman Burnett, Esq., M. A.

INNER TEMPLE.

June 8.

George William Tucker, Esq., B. A.
John Henry Brand, Esq., D. C. L.

Henry William Sharp, Esq., B. A.
 Willingham Franklin, Esq., B. A.
 Edward Rushton, jun., Esq., B. A.
 David Ainsworth, Esq., S. C. L.
 Thomas Brookshank, jun., Esq., B. A.
 Frederic Stewart MacGachen, Esq.
 Thomas Horrocks, Esq.
 Richard Barton, Esq., B. A.
 Edward Alex. Aubrey Moriarty, Esq., B. A.
 Ratcliffe Pring, Esq.
 Richard Assheton Cross, Esq., B. A.
 Benjamin Blades Haworth, Esq., B. A.
 Charles Edward Murray, Esq.

MIDDLE TEMPLE.

May 26.

Edward Smith, Esq.
 Henry Scotland, Esq.

June 9.

George Essex Honyman, Esq.
 William Sanderson Gawtress, Esq.
 Ernest Haythorne Reed, Esq.
 Harrison Dalton, Esq., B. A.
 Hon. George Waldergrave.
 Henry Pering Peilew Crease, Esq., B. A.
 William Woodward Manning, Esq.
 Thomas Rust, Esq.
 Henry Shaw Holford, Esq.
 James Spittall, Esq.
 Charles Robert Telfair, Esq.
 John Lucie Smith, Esq.

GRAY'S INN.

June 6.

Sir George Stephen.
 Thomas Hughes Greenland, Esq.

CANDIDATES WHO PASSED THE EXAMINATION.

Trinity Term, 1849.

Names of Candidates.

To whom Articled, Assigned, &c.

Adams, Henry Cranstoun . . .	. Beadon and Sweet, Taunton
Arnold, Thomas . . .	. Henry William Dickinson, Poole ; Edwin Newman, Yeovil
Atkinson, George . . .	. Edward Lambert, 4, Raymond-buildings, Gray's-inn
Barrett, John William . . .	. James Waldron, Hartswell, near Wivelscombe ; Charles Parsons, Temple-chambers, Fleet-street
Bartley, Henry John . . .	. Charles Pitt Bartley, 55, Westbourne-terrace, and 30, Somerset-street
Beachey, John, jun. . . .	. William Francis D'Arcy, Newton Abbot ; David Simpson Morice, 29, Coleman-street
Beilby, Thomas Falconer . . .	. Thomas Holden, Hull
Bellairs, George Clarke . . .	. Edmund Percy, Nottingham
Black, James Alexander . . .	. Joseph Williamson Westmorland, Wakefield
Bradbury, Augustus . . .	. Benjamin Hardwick, Weaver's-hall, Basinghall-street
Bromley, Edward . . .	. Joseph Warner Bromley, 1, Soho-square
Bubb, George Turner . . .	. John Bubb, Cheltenham
Cabcart, Robert James . . .	. William Roberts, Coleford
Charrington, Alfred Philip . . .	. James Weston, 31, Fenchurch-street
Clark, Francis . . .	. James Lampard, Winchester
Collis, Charles William . . .	. Thomas Turner A'Beckett, 7, Golden-square
Cooke, John . . .	. Charles Archer Curtis, Abingdon ; William Collison, 28, Great James-street, Bedford-row
Corbett Arthur Henry . . .	. John James Gutch, York
Crush, Joseph, jun. . . .	. Edward Swinborne Chalk, Chelmsford
Evans, John . . .	. Owen Gray, 25, Great Tower-street, City
Ferus, Francis . . .	. John Marshall Barwick, Leeds ; John Everard Upton, Leeds
Foster, Benjamin . . .	. Robert Swan, 12, Gray's-inn-place
Francis, William . . .	. William Rogers Cope, Birmingham ; Edward Amos Chaplin, 3, Gray's-inn-square
Freeman, Henry William . . .	. William Henry Gwinnett, Cheltenham
Gilbert, Thomas . . .	. Thomas Colmore, Birmingham
Grange, William . . .	. George Babb, Great Grimsby
Granger, Charles . . .	. Gideon Maude, Leeds.
Greenway, Richard . . .	. Thomas Griffin Philpotts, late of Newport and Pontypool, now of Cardiff ; Charles Henry Williams, Pontypool
Hampson, Samuel . . .	. James Chapman, Manchester
Hargrave, Edward . . .	. William Ghrimes Kell, 43, Bedford-row
Harris, Henry . . .	. Henry Reginald Hill, 34, Moorgate-street, (deceased) ; George Bickley, 2 Mitre-court, Temple, and 34, Moorgate-street
Harwood, Joseph . . .	. Daniel Davies, 21, Warwick-street, Regent-street
Hawkes, Jonathan Blundell . . .	. Francis Ridout Ward, Bristol
Hesp, William, jun. . . .	. Luke Thompson, York ; William Smith, jun., York
Hollings, George . . .	. John Stuart, 1, Field-court, Gray's-inn
Horrex, Theophilus . . .	. William Pott Pillans, Swaffham ; Frederick Dufaur, 13, South-square, Gray's-inn
Howlett, James Warnes . . .	. Frederick Robert Partridge, King's Lynn
Hunter, Rawdon, jun. . . .	. Charles Cook, 1, New-inn, (deceased) ; Robert Bradfield Sanders, 1, New-inn
Jacomb, Frederick William . . .	. William Jacomb, Huddersfield ; Andrew Van Sandau, 27, King-street, Cheapside

Jenkyn, Osborn Augustus . . .	William Sanger, 4, Essex-court, Temple
Maniere, Edward . . .	John Crafts, 5, Clement's-inn, Strand
Massay, Henry Eyre . . .	Richard Bullock Andrews, Epping; Thomas Eaton, 10, Gray's-inn-squares
Maxwell, Edward . . .	John Broughton, Peterborough
Minshall, Charles . . .	Nathaniell Minshall, sen., Oswestry; Henry Mooring Aldridge, Poole; and further assigned to Thomas Minshall, Oswestry
Norwood, John Dobree . . .	William Cruttenden, Ashford
Oliver, George Heywood . . .	George Thomas Thompson, Dover
Ormond, William, jun. . . .	William Ormond, Wantage
Payne, George . . .	Henry Offord, Hadleigh; John Frederick Robinson, Hadleigh
Pender, William Rous Tresilian . . .	Pender and Genn, Falmouth
Reed, Walter James . . .	Edward Sidebottom, Hull
Reed, Paul Octavius, Haythorne . . .	Henry Reed, Bridgewater
Reveley, Samuel John . . .	Joseph Atkinson, Penrith
Roberts, Llewellyn Lloyd . . .	Arthur Troughton Roberts, Mold; John Hughes, Bangor
Robinson, George . . .	John Garrard, Olney
Roby, John Henry . . .	Wolley Foster, Salford and Manchester
Rogers, Alfred . . .	David Gray, 20, Lincoln's-inn-fields
Rowcliffe, William . . .	Charles Rowcliffe, Stogumber, near Taunton
Rudge, William Joseph . . .	John Smith, Leman-street; Walter Charles Venning, Tokenhouse-yard, City
Senior, James Christopher . . .	Charles James Abbott, 3, New-inn, Strand
Sewell, Henry . . .	Edward Thompson, Salter's-hall, City; Isaac Sewell, Old Broad-street
Shaw, Francis . . .	William Williamson, Derby
Smith, Daniel Brummell . . .	George Smith, 24, Golden-square; St. Pierre Butler Hooke, 7 Coleman-street, and re-assigned to George Smith
Smith, Robert Alexander . . .	Robert Smith, Richmond; Robert George Clarke, 43, Craven-street, Strand
Sprott, Walter . . .	Richard Raven, 2, King's Bench-walk; Thomas Lyon, Yeovil
Stapleton, John . . .	Edward Williamson, 50, Lincoln's inn-fields
Stretton, Clement . . .	Joseph Harris, Leicester
Taylor, James . . .	John Henry Law, Manchester
Thompson, William . . .	Richard Weston Parr, Poole
Whitehead, Mark Henry . . .	Henry Whitehead, Rochdale; George Whitehead, Bury, and re-assigned to Henry Whitehead
Wright, Thomas . . .	Robert Bendle, Carlisle

RECENT DECISIONS IN THE SUPERIOR COURTS.

AND SHORT NOTES OF CASES.

Rolls Court.

Cardinal v. Bower. June 9, 1849.

PRACTICE.—MISTAKE.—SOLICITOR.

The Court will, upon a petition for other objects, order a decree or order to be amended in respect of a mere clerical error, or slip; but a material error in a matter of account arising from a mis-statement in the Master's report, must be rectified by a reference back to the Master, and semble, if it have been occasioned by negligence of the solicitor, he may be charged with the expenses of setting it right.

THIS was a petition in a creditors' suit, and it sought to have a conditional contract carried into effect for the sale of a portion of the estate of the testator named in the pleadings, which had been sold under the order of the Court on further directions, but the contract for sale of which had been abandoned in consequence of the title being imperfect. Subsequently a purchaser had been found, who was willing to take the title as it was; but it was discovered that the property, which was copyhold, was not included in the order for sale, the order having

simply directed the testator's "freehold" instead of freehold "and copyhold" estates to be sold. The petitioner also prayed the payment into Court of the balance due from a deceased executor, but of a smaller sum than was found due by the Master's report, he having been charged twice over for a sum of 34*l.* 10*s.* received from certain rents specified in the report.

Mr. *S. Miller* for the petitioner said, that the proposed purchaser was willing to complete the purchase, notwithstanding the error in the order for sale, if the Court would make the order; and in support of the other part of the petition, he read an affidavit showing clearly the mistake in the report.

Mr. *Metcalf* appeared for the purchaser, and consented to the order asked for being made.

The *Master of the Rolls* said, that strictly the order for sale should have been amended before the present application, but as the error appeared to have arisen from a mere slip, he would make an order upon this petition for amending the order for sale, and for carrying the proposed contract into effect. With regard to the error in the Master's report, his Lordship

said, that as it related to a matter of account, and it was an error which the parties might with ordinary diligence have prevented, he felt great difficulty in rectifying it without sending the accounts back to the Master, in which case the reference back would be at the expense of the party whose duty it was to see that the report was correct; but as the amount was small he would make the order.

Vice-Chancellor of England.

In re Hamilton's Settlement. May 4, 1849.

PAYMENT OUT OF COURT OF FUND PAID IN UNDER THE TRUSTEES' RELIEF ACT.

Order for payment out of Court to petitioner of fund paid into Court, under the 10 & 11 Vict. c. 96, by trustees under a marriage settlement—the marriage not having taken place.

THIS petition was presented by Col. Hamilton and his daughter, praying that a fund paid into Court under the 10 & 11 Vict. c. 96, (the Trustees' Relief Act,) might be paid out to them. It appeared that a marriage being in contemplation between his daughter and a French gentleman, Monsieur Fluery, a settlement was prepared, and a sum of 8,000*l.* consols was settled to the separate use of the daughter for life, and afterwards for the children of the marriage, with a provision, that in the event of the marriage not taking place within a year, the settlement should be void, and the fund should be held in trust for the settlor. The settlement was executed in the English form, and the fund actually transferred to the trustees. The father of Monsieur Fluery subsequently objected to the form of the settlement—declined to make the settlement which had been arranged on his son's behalf, and refused his consent to the marriage, without which, according to the French laws, a man could not marry under the age of 24. A deed of revocation of the trusts was therefore prepared, and the trustees paid the fund into Court under the 10 & 11 Vict. c. 96.

Stuart and Dart, in support of the petition, cited *Robinson v. Dickenson*, 3 Russ. 399; *L. Shadwell* for the trustees; *C. Hall* for Monsieur Fluery.

The Vice-Chancellor said, that as the whole affair appeared to be a mistake, and there was no opposition to the petition, the Court had power to order the fund to be paid out to Col. Hamilton.

Order accordingly.

The Governors of King Edward's School v. The London and North-western Railway Company. May 5, 1849.

INJUNCTION.—FESTINATIO.—PAYMENT OF INTEREST ON PURCHASE MONEY.

Upon an application for an injunction re-

straining a railway company from proceeding with their work until interest had been paid on the purchase money paid into Court since the time when they entered into possession: Held, that parties applying for the festinum remedium of injunction must show festinatio in their application, and as such had not been shown, the injunction was refused: And held, that no interest could be ordered to be paid, as in consequence of the periods at which the interests were purchased varying considerably, and the land being let to different tenants, it could not be ascertained.

THE defendants, in the latter part of the year 1846, served a notice on the plaintiffs, the governors of King Edward the Sixth's Free Grammar School at Birmingham, to treat for the purchase of certain lands on which were several houses in the occupation of yearly tenants. Negotiations were opened between the parties as to the price to be paid for the fee. Pending these negotiations, the company purchased the interests of some of the tenants in possession, and entered upon and took possession thereof. The plaintiffs requested the company to issue their warrant to the sheriff to summon a jury for the purpose of assessing the compensation, and a verdict was returned for 39,843*l.*, which was paid into Court under the 8 Vict. c. 18, s. 76. The defendants then proceeded with the works as owners, whereupon this petition was presented for an injunction to restrain them from proceeding therewith until they should pay interest upon the purchase money, from Lady-day 1847, at which period they had (as was alleged) entered into possession of the land.

Roll and Spooner in support of the motion; *Bethell and Speed*, contra.

The Vice-Chancellor said, that as it was impossible to determine what interest was payable, by reason of the land being let to different tenants and the time at which their interests were purchased varying considerably, the application for payment of interest must be refused. It appeared that the company had commenced dealing with such portions of the land as were unoccupied, in such a manner that the governors ought to have taken proceedings at once. The rule in applying for the *festinum remedium* of an injunction was, that the parties applying should show something like *festinatio* in their application, and as such had not been shown, the injunction must therefore be refused.

Vice-Chancellor Knight Bruce.

Esparte Newton, in re Newton: Moss, respondent. May 23, 1849.

COSTS TO ASSIGNEE ACTING AS SOLICITOR TO THE FIAT.

Held, that a solicitor, acting as assignee and solicitor to the fiat, is entitled to an allow-

ance for labour done by his clerks, although not for his own services, but without profit.

IN 1832, a fiat issued against Newton, who traded at Derby as a liquor merchant, upon the application of Mr. Moss, a solicitor, as petitioning creditor, and the certificate was obtained in 1843. The bankrupt then offered to pay 20s. in the pound to his creditors, which they agreed to accept, with interest. The respondent, however, who acted as assignee and solicitor under the fiat, refused to accede to the proposition, and claimed interest at 4 per cent. for the 17 years elapsed after the fiat. A reference had therefore been made to the Commissioner to review the respondent's bill of costs, and the Commissioner had disallowed all costs, except for payments and disbursements. This petition was therefore presented and prayed a re-audit of the accounts relative to the allowance of costs to the respondent, who was also a mortgagee of landed property of the bankrupt.

Bacon and *E. Webster*, for the respondent, submitted that the double position he held had not only been unsought, but rendered necessary by the non-appearance of other creditors, and contended that, in addition to the costs specifically paid out of pocket, the respondent ought to be allowed a fair amount in respect of the services of his clerks in copying and otherwise, and for which he had really paid in the payment of their salaries, although the sums paid in respect of the business could not be distinguished.

Swanston, for the assignees, *Tripp*, for other parties interested, contended that a trustee or assignee, acting as the solicitor of the estate, could only be allowed payments made specifically in respect of the business of the trust or assigneeship, and that, therefore, the certificate of the Commissioner disallowing such costs should be adopted.

The *Vice-Chancellor* said, that the Commissioner, under the order of reference, had only allowed the actual disbursements in respect of the assigneeship. The Court, however, in the exercise of its jurisdiction, would make some additional allowance for the services of the solicitor's clerks, although not for his own services; but, of course, without profit.

An offer was subsequently made of 40l., and was accepted, the fiat to be annulled and the estate re-conveyed;—the respondent's costs not to exceed 30l., to be paid by the petitioner.

June 13.—*Harris v. Hamlyn*—Order on plaintiff to pay the costs of the solicitor to the Suitors' Fund, who had been appointed to appear for some of the infant defendants.

—13.—*M'Intosh v. Great Western Railway Company*—Part heard.

—13.—*Ex parte London and Manchester Direct Railway Company (Remington's line)*—Reference to Master to review his order.

—13.—*Sainter v. Ferguson*—Injunction to restrain defendant from practising as a surgeon or apothecary within seven miles, under an agreement.

Vice-Chancellor Wigram.

In re Manchester and Leeds Railway Company, Ex parte Osbaldistone. June 2, 1849.

SETTING OUT PUBLIC ACT IN PETITION.—
COSTS.

Held, that the costs occasioned by setting out the words of a public act at length would be refused under the 122nd Order of May, 1845.

THIS petition was presented for the investment of the purchase-money paid into Court by the company for some land required for the railway and taken under their act, and for the payment of costs by the company. It appeared that the length of the petition had been increased by the setting out at length of certain sections of the Lands Clauses Consolidation Act, which provided for the payment of costs by the company.

Elmsley in support of the petition. *Bacon*, for the company, submitted that, inasmuch as the 8 Vict. c. 18, was a public act, the petition ought not to have set out the sections at length, and that the Taxing Master should, therefore, be directed, in taxing the costs, to have regard to the 122nd Order of May, 1845, which provides, that "if, upon the hearing of any cause, petition, or motion, the Court is of opinion that any pleading, petition, or affidavit which has not been referred for impertinence, or any part of any such pleading, petition, or affidavit, is improper or of unnecessary length, the Court may either declare such pleading, petition, or affidavit, or any part thereof, to be improper and of unnecessary length, or may direct the Taxing Master to look into such pleading, petition, or affidavit, and distinguish what parts or part thereof are or is improper or of unnecessary length, and may direct the Taxing Master to ascertain the costs occasioned to any party by such parts thereof as in the one case may have been declared to be, and in the other case may have been distinguished as being improper or of unnecessary length, and may make such order as is just for the payment, set-off, or other allowance of such costs."

The *Vice-Chancellor* said, that it was sufficient to refer to the sections of a public act, and was unnecessary to set out the language of the statute. As, however, in the present instance the costs occasioned thereby were trifling, and the company consenting to waive the objection, the prayer of the petition would be granted.

Order accordingly.

Queen's Bench.

(Before the Four Judges.)

In re Mark Fothergill. June 12, 1849.

ATTORNEY.—RE-ADMISSION.

Where an attorney had acted as attorney in instructing counsel for the prisoner at Quarter Sessions, and taken out a subpoena,

and had stated in open Court that he was an attorney, and the like at the clerk of the peace's office, and where the affidavit in support of the application for re-admission, did not answer these facts: Held, that he was not entitled to be readmitted.

THIS was an application by Mark Fothergill, of Selby, to be re-admitted. From the affidavit, sworn 9th Jan. 1849, in support of the application, to Mr. Justice Wightman, at Chambers, (reported 37 L. O. 300,) it appeared that he was duly admitted on June 6, 1836, and duly took out his annual certificate to enable him to practise for the years 1836—1843, in which latter year his last certificate expired, and went on to state, "that since the expiration of such last-mentioned certificate, in the year 1843, as aforesaid, he hath not practised as an attorney in his own name or in the name or names of any other person or persons, nor hath he incurred any penalty or penalties by practising." It appeared, however, from two affidavits sworn 27th Jan., and filed in opposition to this application, that at the Epiphany Quarter Sessions of the peace, held in and for the borough of Kingston-upon-Hull, on Jan. 7, 1848, two indictments were preferred against one Sidney Cook for larceny, and that Mr. Archbold was counsel for the prosecution, and Mr. Dearsley was counsel for the prisoner—that Mr. Fothergill sat next to Mr. Dearsley and appeared to be instructing him relative to the trial—that Mr. Archbold, during the trial, made a remark that Mr. Dearsley was not instructed by an attorney for the defence of the prisoner, but by a porter dealer,—that Mr. Dearsley said he was instructed by an attorney, and appealed to the Recorder whether he thought that he would take a brief without an attorney's name marked upon it—that the present applicant stood up and speaking to the Recorder said:—"I am an attorney practising at Selby, I have been in practice some years," or words to that effect, and appeared very indignant at the remarks, and repeated several times that he was an attorney practising at Selby,—and that Mr. Dearsley in his address to the jury said, that the gentleman who instructed him was a highly respectable solicitor at Selby. It also appeared from another affidavit by the clerk of the peace for the town of Hull, and a clerk in his office, that Mr. Fothergill in Dec. 1847, a few days previously to the then ensuing Epiphany Quarter Sessions of the Peace held in and for the borough of Kingston-upon-Hull, applied at the clerk of the peace's office for a subpoena to be issued on behalf of one Sydney Cook—that as there was reason to know or believe that the applicant was then engaged in the trade of a porter dealer, some scruple was made about issuing such subpoena, and the question was asked, whether he was an attorney, when he replied that he was, and mentioned with whom he was articulated, upon which the subpoena was issued, and the fee paid by Mark Fothergill as the attorney.

In the affidavit of Mark Fothergill in reply, sworn February 2, it was alleged that he did

not act for the said Sydney Cook in any manner as an attorney, neither did he receive any remuneration whatever from the said Sydney Cook or from any other person or persons directly or indirectly on his behalf; but on the contrary, that he assisted to make up the sum necessary to pay the actual and necessary fees of Court, counsel, and expenses of his witnesses, and admitted that he drew up a plain statement of facts and gave it to Mr. Dearsley, and obtained the subpoena, but not under the representations mentioned in the affidavits, and lastly, that he had nothing further to do with the defence than as above-mentioned.

Mr. Justice Wightman having refused the application, an affidavit was sworn on 18th May, in support of the present application, reiterating the facts stated in the affidavit in reply.

Pashley in support of the motion; F. Robinson, on the part of the Law Society, contra.

The Court said, as the applicant had been guilty of making the statement in open Court, that he was an attorney when he was not, and which fact was left unanswered or explained by the affidavit in support of the present application, it was quite clear that he had acted in such a way as precluded him from being re-admitted.

June 13.—*Regina v. Blane*—Rule absolute to quash orders of affiliation, on the ground that the child was born in France.

— 13.—*Walley v. Stone and another*—Cur. ad. vult.

— 14.—*Gardner v. Slade*—Rule absolute to enter nonsuit.

— 14.—*Regina v. Bowen*—Rule absolute for new trial.

— 15.—*Small v. Nairne*—Cur. ad. vult.

— 15.—*Hammond v. Bendyshe and another*—Cur. ad. vult.

Queen's Bench Practice Court.

(Coram Wightman, J.)

In re West Strand Mutual Assurance Association. May 29, 1849.

ATTENDANCE OF ATTORNEY TO REGISTER DEEDS.

Rule nisi granted on an attorney, who was the attesting witness to mortgage deeds, to attend at the Middlesex Registry to register the same.

THIS was an application for a rule calling on Mr. —, an attorney, to show cause why he should not, within a certain time, attend at the office of the Registrar of Deeds for the County of Middlesex, in order that certain mortgage-deeds might be registered. It appeared that Mr. — had been appointed attorney to the above association in 1844, and that various sums of money had been advanced on mortgage, and as the property was in Middlesex, it was necessary to register the deeds. The affidavits of the different mortgagors stated that they had paid Mr. — his bill of costs, and that distinct charges had been made therein for

registering the deeds, but which deeds had not been so registered. In 1846, Mr. — ceased to be the solicitor to the association, and the deeds were in possession of his successor. As Mr. — was the attesting witness, and the deeds could only be registered upon the oath of the attesting witness, several appointments had been made for Mr. —'s attendance at the registry, but he had failed to keep them, whereupon this application was now made.

Pulling in support of the motion.

The Court granted a rule nisi.

Court of Common Pleas.

Doe dem. Brammell v. Collinge. June 6, 1849.

LEASE BY PERPETUAL CURATE.

H., the perpetual curate of the chapelry of S., granted certain estates and all coal mines thereunder for 21 years; the lease was confirmed by the Bishop of the diocese and by the rector: Held, that the lease was void, inasmuch as the patron of the advowson had not joined in the deed, and that the acceptance of rent by H.'s successor only created a tenancy from year to year, voidable upon six months' notice.

In 1830, one Hordern, the then curate of the chapelry of Shaw, in the parish of Prestwick-cum-Oldham, Lancashire, and predecessor of the Rev. Mr. Brammell, lessor of the plaintiff, granted a lease to the defendant of the Nether Hay Estate, which had been added about a century ago to the chapelry by the governors of Queen Anne's Bounty. In 1839, the lease was renewed, and the Nether Hay Estate, and all coal mines thereunder, were granted to the defendant, with power to work the same for the period of 21 years, to begin from December, 1839, at a rent of 250*l.*, payable to Hordern and his successors. A right of inspection was reserved, and a power to the lessee of determining the lease at the end of 7 or 14 years. It was further declared that the yearly sum of 50*l.*, part of the 250*l.*, should be paid to the governors of Queen Anne's Bounty and invested for the benefit of the curate of the chapelry for the time being. The lease was confirmed by the Bishop of Chester as ordinary, and by the rector of Prestwick as patron of the chapelry. In 1841, Hordern resigned the curacy, and the Rev. Mr. Brammell succeeded thereto, and took rent from the defendant up to 1845, his agent having, previous to that time, inspected the mines. In 1846, he gave the defendant six months' notice to quit, but the defendant disregarding it, the present action was brought. The trial took place at the Lancaster Summer Assizes for 1848, and a verdict was found for the plaintiff, subject to a special case stating these facts.

Hugh Hill, Sumner, and Tatham, for the plaintiff, contended that the lease of 1839 was wholly void for want of confirmation by the patron of the advowson of the rectory.

Cowling for the defendant.

The Court said, that this was a void lease, if

the necessary parties had not joined. Now, at common law the interest of the patron is considered to be of such a nature as to require him to join in any act tending to the permanent diminution of the value of the advowson, and in order to give validity to this lease his concurrence was necessary, which was not stated to have been given, and the assent of the rector was only *quod* rector. The lease was therefore void, and in such a case it could not be set up by any subsequent acceptance of rent by the successor of Hordern. Such acceptance could only create a yearly tenancy, which had been determined by the notice to quit; and the plaintiff was, therefore, entitled to recover.

June 19.—*Dakin, executrix, v. Browne and another*—Demurrer to plea allowed.

Eschequer.

Ness v. Angas. May 6, 1849.

WIFE HOLDING SHARES IN JOINT-STOCK COMPANY.—LIABILITY OF HUSBAND.

Where a wife had acquired shares in a joint-stock company, and the husband had not elected to become a shareholder and otherwise complied with the requisites of the 7 G. 4, c. 46, held, that he was not responsible under a proceeding by sci. fa. against him as a member of the company.

A RULE nisi had been obtained upon leave reserved to set aside the verdict in this case and enter a nonsuit. This action was brought upon a *sci. fa.*, under the 7 G. 4, c. 46, s. 13, by a creditor against the defendant as a member of the Newcastle-on-Tyne Joint-Stock Banking Company. Judgment had been recovered in an action against the public officer of the company, and the plaintiff sought to make the defendant liable in respect of five shares which the defendant's wife had purchased during coverture, with his consent, out of the produce or interest of certain funds settled on her upon her marriage. The shares were registered in the wife's name, but it appeared that the defendant had received the dividends from time to time in respect thereof. The trial took place at the last Newcastle assizes, before Mr. Justice Cresswell.

Watson, Q. C., and *Manisty* now showed cause against the rule, and contended that the shares being personal property, vested on the purchase in the husband, and that therefore he was responsible.

Knowles, Q. C., and *Grainger*, contra, urged that, as this was a statutable liability under the 7 G. 4, c. 46, the defendant could not be held responsible, unless he had signed the deed of settlement and complied with the other requisites mentioned in that statute; and also, that the remedy was in equity against the separate estate of the wife; citing *Steward v. Greaves*, 10 M. & W. 711; *Scott v. Berkeley*, 3 C. B. 925.

The Court said, the proceeding by which a

party might be made responsible for the debts of a joint-stock company by *sci. fa.* was a great departure from the common law created by the stat. 7 G. 4, c. 46, and as it was an extraordinary liability, before it could be established, distinct and positive proof should be given that the party was a member. Here, however, the defendant pleaded that he was not a member. No one could be a member who had not signed the deeds and complied with the requisites of the special act, and therefore, although the defendant might acquire certain marital rights in virtue of the purchase by his wife, he could not be held responsible under the *sci. fa.* The deed of settlement provides that a party should not be held liable as a shareholder, in virtue of his wife having acquired shares *dum sola*, unless he had elected to become a shareholder after his marriage, and complied with the requirements of the statute. The defendant, therefore, is not liable in respect of the shares held by his wife, and the rule to enter a nonsuit must be made absolute.

Rule accordingly.

June 16.—*Long v. Bignold*—Rule absolute to enter nonsuit.

—16.—*Fryer v. Gathercole*—Rule for new trial discharged.

—18.—*Causfield v. Blenkinsopp*—Rule to set aside nonsuit discharged.

Exchequer Chamber.

Regina v. Chapman. June 2, 1849.

PERJURY.—INDICTMENT.

Held, upon appeal to the Exchequer Chamber, that an indictment will lie for falsely swearing in an affidavit made before the surrogate of a diocese for the purpose of obtaining a marriage licence.

THE prisoner was tried on an indictment for perjury at the Somersetshire Assizes, held at Taunton, and convicted. It appeared on the trial, that he had undertaken to procure a marriage licence for one Joseph Baker, and had accordingly sworn in an affidavit made before the Surrogate of the diocese of Bath and Wells, that he was about to marry one Sarah Fry. Denman, L. C. J., who presided at the trial, reserved for the consideration of this Court, whether the indictment had been sustained by the evidence,—first, because it was not shown that the statement in the affidavit had been made in the form of an oath; and 2ndly, that the allegation of the Surrogate's having power to administer oaths had not been proved: point of law or fact.

Fitzherbert, for the Crown, in support of the conviction; *Phinn*, contra.

The Court affirmed the conviction, and gave judgment in favour of the Crown.

June 13.—*Corporation of Birmingham v. Reginam*—Judgment of the Court of Queen's Bench affirmed.

June 13.—*Regina v. Turner*—Stand over.

—14.—*Gregory v. Reginam*—Stand over.

—13, 15.—*King v. Reginam*—Judgment of the Court below affirmed.

—13, 15.—*Wright v. Reginam*—Judgment of the Court below affirmed.

—15.—*Webb v. Salmon, Webb v. Spicer*—Judgment for the plaintiff *non obstante veredicto*.

—15.—*Vigers v. Bishop of Llandaff*—Stand over.

—15.—*Alridge v. Hippersley*—Stand over.

—16.—*Sercombe v. Ashpitel*—*Cur. ad. vult.*

—16.—*De Bevoir v. Owen*—*Cur. ad. vult.*

—18.—*Jones v. Chapman*—Judgment of the Court below affirmed.

—18.—*Williams v. Deacon and others*—Judgment affirmed.

—18.—*Brown v. Livins*—Compromise.

—18.—*Turner v. Rhodes and another*—Judgment affirmed.

—18.—*Chaplin v. Clark*—Judgment of the Court below affirmed.

Court of Bankruptcy.

(Coram Mr. Commissioner Fonblanque.)

In re Webster and another, ex parte Jaques.
June 1, 1849.

REPUTED OWNERSHIP.

Certain watches were delivered to the bankrupts under an agreement for sale or return, with power at any time to demand and obtain restitution of the property. The goods were exposed for sale with the bankrupts' other stock, and appeared to be their property. Held, that there was such a reputed ownership as to pass the watches to the assignees.

THE bankrupts were jewellers and watch-makers in Cornhill, and had been entrusted, for sale or return, with gold and silver watches to the value of 200*l.* by Mr. Jaques. A written agreement was entered into, whereby it was agreed that Mr. Jaques should be at liberty to demand at any time, and obtain possession of, the property. It appeared that the goods had been exposed for sale in the shop as the bankrupt's own property, and seemed to all intents and purposes to form part of their stock, and the creditors had no means, up to the failure, of knowing that they were not. The assignees and Mr. Jaques had agreed to be bound by the Commissioner's decision on the question of reputed ownership in the property.

Linklater, for the assignees, cited *Horn v. Baker*, 9 East, 215.

Hobler for Mr. Jaques.

His Honour held, that the assignees were entitled to the property as having been in the possession, with the consent of Mr. Jaques, of the bankrupts as reputed owners at the time of their bankruptcy; and that the agreement under which the goods were delivered did not affect the reputed ownership.

BUSINESS OF THE COURTS.

Privy Council.

The Judicial Committee of the Privy Council will sit for the despatch of business on the following days, viz :—

Thursday	June 21, 1849.	} At 10 A.M.	Monday	July 2, 1849.	} At 11 A.M.
Friday	22 "		Tuesday	3 "	
Monday	25 "	} At 11 A.M.	Thursday	5 "	} At 10 A.M.
Tuesday	26 "		Friday	6 "	
Wednesday	27 "	} At 10 A.M.	Saturday	7 "	
Thursday	28 "				
Friday	29 "				

LIST OF APPEALS.

APPELLANTS.	RESPONDENTS.	WHENCE.	SOLICITORS OR PROCTORS.	
			APPELLANTS.	RESPONDENTS.
The Queen	Dias	Vice - Admiralty, St. Helena	Dyke	Engleheart
Davis	Vidal	Jamaica	Symes and Teesdale	
Davis	Barrett	Ditto	Townsend	Nelson
The Queen	Belcher	Court of Admiralty		
The Queen and Fitzgerald	Quetron	Vice - Admiralty, of Gambia	Dyke	
Wilson	Wilson	Court of Arches	Blackburn	Shephard, Bedford, and Middleton
Marchioness of Bute	Mason	New South Wales	Braikenridge	
Mudhoo Soondun	Surroopchunder			
Sundial	Sirkar Chawdry	Bengal	Clarke	Lawfords
Ditto	Ditto	Ditto	Ditto	Ditto
Montague	Governor & Council of Van Diemen's Land	Van Diemen's Land	Withall	Taylor and Collison
Raja Oodit Purkash Sing	Martindell and Stacy	Bengal	Clarke	Lawfords.
Doorga Persad Roy Chowdry	Tarra Persad Roy Chowdry	Ditto	Ditto	Ditto
Bank of Bengal	Macleod	Ditto	Oliverson	Rowland & Hacon
Ditto	Fagan	Ditto	Ditto	Fladgate and Jackson
Boschetti Shea	Power and Boschetti	Gibraltar	Peile and Sons	Milne and Parry and Crowder and Maynard

CHANCERY SITTINGS.

Lord Chancellor.

Sittings after Trinity Term, 1849.

AT LINCOLN'S INN.

Wednesday June 20 { The 1st Seal—Appeal Motions and appeals.

Thursday 21 }
 Friday 22 } Appeals.
 Saturday 23 }
 Monday 25 }

Tuesday 26 }
 Wednesday 27 } Appeals.
 Thursday 28 }

Friday 29 { (Petition-day) Petitions unopposed and Appeals.

Saturday 30 }
 Monday July 2 } Appeals.
 Tuesday 3 }

Wednesday 4 { The 2nd Seal—Appeal Motions and Appeals.

Thursday 5 Appeals.

Friday 6 { (Petition-day) Petitions unopposed and Appeals.

Saturday . . . 7	} Appeals.	
Monday . . . 9		
Tuesday . . . 10		
Wednesday . . . 11		
Thursday . . . 12	{ (Petition-day) Petitions unopposed and Appeals.	
Friday . . . 13		
Saturday . . . 14		
Monday . . . 16		
Tuesday . . . 17	} Appeals.	
Wednesday . . . 18		
Thursday . . . 19		
Friday . . . 20		
Saturday . . . 21	{ (Petition-day) Petitions unopposed and Appeals.	
Monday . . . 23		
Tuesday . . . 24		
Wednesday . . . 25		
Thursday . . . 26	} Appeals.	
Friday . . . 27		
Saturday . . . 28		
Monday . . . 30		
Tuesday . . . 31	{ (Petition-day) Petitions unopposed and Appeals.	
Wednesday Aug. 1		
Thursday . . . 2		
Friday . . . 3		
Saturday . . . 4	{ The 3rd Seal—Appeal Motions and Appeals.	
Monday . . . 5		
Tuesday . . . 6		
Wednesday . . . 7		
Thursday . . . 8	{ The 4th Seal—Appeal Motions and Appeals.	
Friday . . . 9		
Saturday . . . 10		
Monday . . . 11		
Tuesday . . . 12	{ (General Petition - day,)—Petitions.	
Wednesday . . . 13		
Thursday . . . 14		
Friday . . . 15		

N. B.—Such days as his Lordship sits on appeals in the House of Lords excepted.

Master of the Rolls.

AT THE ROLLS.

Wednesday June 20 Motions.

AT THE JUDICIAL COMMITTEE.

Thursday . . . 21
Friday . . . 22

AT THE ROLLS.

Saturday . . . 23 { Pleas, Demurrers, Causes, Further Directions, and Exons.

AT THE JUDICIAL COMMITTEE.

Monday . . . 25
Tuesday . . . 26
Wednesday . . . 27
Thursday . . . 28
Friday . . . 29

AT THE ROLLS.

Saturday . . . 30 { Pleas, Demurrers, Causes, Further Directions, and Exceptions.

AT THE JUDICIAL COMMITTEE.

Monday . July 2
Tuesday . . . 3

AT THE ROLLS.

Wednesday . . 4 Motions.

AT THE JUDICIAL COMMITTEE.

Thursday . . . 5
Friday . . . 6
Saturday . . . 7

AT THE ROLLS.

Monday . . . 9
Tuesday . . . 10
Wednesday . . . 11
Thursday . . . 12
Friday . . . 13
Saturday . . . 14
Monday . . . 16
Tuesday . . . 17

Pleas, Demurrers, Causes, Further Directions, and Exceptions.

Wednesday . . 18 Motions.

Thursday . . . 19
Friday . . . 20
Saturday . . . 21
Monday . . . 23
Tuesday . . . 24
Wednesday . . . 25
Thursday . . . 26
Friday . . . 27
Saturday . . . 28
Monday . . . 30
Tuesday . . . 31

Pleas, Demurrers, Causes, Further Directions, and Exceptions

Wednesday Aug. 1 Motions.

Thursday . . . 2 Petitions in General Paper.

Consent and Short Causes, and Unopposed Petitions, every Saturday (except Saturday, the 7th July), at the sitting of the Court.

NOTICE.—Consent Petitions must be presented, and copies left with the secretary, on or before the Thursday preceding the Saturday on which it is intended they should be heard.

Vice-Chancellor of England.

AT LINCOLN'S INN.

Wednesday June 20 The 1st Seal—Motions.

Thursday . . . 21 No Sittings.

Friday . . . 22 { (Petition - day,) Petitions, (unopposed first,) Short Causes and Causes.

Saturday . . . 23
Monday . . . 25
Tuesday . . . 26
Wednesday . . . 27
Thursday . . . 28

Pleas, Demurrers, Exceptions, Causes, and Further Directions.

Friday . . . 29 { (Petition - day,) Petitions, (unopposed first,) Short Causes, and Causes.

Saturday . . . 30
Monday . July 2
Tuesday . . . 3

Pleas, Demurrers, Exceptions, Causes, and Further Directions.

Wednesday . . 4 The 2nd Seal—Motions.

Thursday . . . 5 { Pleas, Demurrers, Exceptions, Causes, and Further Directions.

Friday . . . 6 { (Petition - day,) Petitions, (unopposed first,) Short Causes and Causes.

Saturday . . . 7
Monday . . . 9
Tuesday . . . 10
Wednesday . . . 11
Thursday . . . 12

Pleas, Demurrers, Exceptions, Causes, and Further Directions.

Friday . . . 13 { (Petition-day) Petitions, (unopposed first,) Short Causes and Causes.

Saturday . . . 14	} Pleas, Demurrers, Exceptions, Causes, and Further Directions.	Thursday . . . 12	} Pleas, Demurrers, Exceptions, Causes, and Further Directions.	
Monday . . . 16				
Tuesday . . . 17				
Wednesday . . . 18	The 3rd Seal—Motions.		Friday . . . 13	} (Petition-day) Petitions and Causes.
Thursday . . . 19	} Pleas, Demurrers, Exceptions, Causes, and Further Directions.	Saturday . . . 14	} Short Causes and Causes.	
Friday . . . 20		} (Petition - day,) Petitions, (unopposed first,) Short Causes and Causes.		Monday . . . 16	} Bankrupt Petitions and Causes.
Saturday . . . 21			Tuesday . . . 17	} Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Monday . . . 23	} Pleas, Demurrers, Exceptions, Causes, and Further Directions.		Wednesday . . . 18		} The 3rd Seal—Motions.
Tuesday . . . 24		Thursday . . . 19	} Pleas, Demurrers, Exceptions, Causes, and Further Directions.	
Wednesday . . . 25		} (Petition - day,) Petitions, (unopposed first,) Short Causes and Causes.		Friday . . . 20	} (Petition-day) Petitions and Causes.
Thursday . . . 26	Saturday . . . 21		} Short Causes and Causes.	
Friday . . . 27	} Pleas, Demurrers, Exceptions, Causes, and Further Directions.			Monday . . . 23	} Bankrupt Petitions.
Saturday . . . 28		} Pleas, Demurrers, Exceptions, Causes, and Further Directions.	Tuesday . . . 24	} Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Monday . . . 30			} (Petition-day) Petitions and Causes.	
Tuesday . . . 31				
Wednesday Aug. 1	The 4th Seal—Motions.			
Thursday . . . 2	General Petition-day.			

N. B. His Honour will take unopposed Petitions at head of paper every day during the Sittings (except Seal-days.)

Vice-Chancellor Knight Bruce.

Wednesday June 20	The 1st Seal—Motions.		Saturday . . . 28	} Short Causes and Causes.	
Thursday . . . 21	} Pleas, Demurrers, Exceptions, Causes, and Further Directions.	} (Petition-day) Petitions and Causes.	Monday . . . 30		
Friday . . . 22			Tuesday . . . 31		
Saturday . . . 23	Short Causes and Causes.		Wednesday Aug. 1	} The 4th Seal—Motions.	
Monday . . . 25	Bankrupt Petitions.		Thursday . . . 2		
Tuesday . . . 26	} Pleas, Demrs., Exceptions, Causes, and Fur. Directions.	} Bankrupt Petitions.	General Petition-day.		
Wednesday . . . 27					
Thursday . . . 28					
Friday . . . 29	} (Petition-day) Petitions and Causes.	} Pleas, Demurrers, Exceptions, Causes, and Further Directions.	Wednesday June 20	} The 1st Seal—Motions and Causes.	
Saturday . . . 30			Thursday . . . 21		
Monday . . . July 2			Friday . . . 22		
Tuesday . . . 3	} Pleas, Demurrers, Exceptions, Causes, and Further Directions.	} Short Causes, Petitions, (unopposed first,) and Causes.	Saturday . . . 23	} Short Causes, Petitions, (unopposed first,) and Causes.	
Wednesday . . . 4			Monday . . . 25		
Thursday . . . 5			Tuesday . . . 26		
Friday . . . 6	} (Petition-day) Petitions and Causes.	} Pleas, Demurrers, Exceptions, Causes, and Further Directions.	Wednesday . . . 27	} Pleas, Demurrers, Exceptions, Causes, and Further Directions.	
Saturday . . . 7			Thursday . . . 28		
Monday . . . 9			Friday . . . 29		
Tuesday . . . 10	} Pleas, Demurrers, Exceptions, Causes, and Further Directions.	} Short Causes, Petitions, (unopposed first,) and Causes.	Saturday . . . 30	} Short Causes, Petitions, (unopposed first,) and Causes.	
Wednesday . . . 11			Monday . . . July 2		
			Tuesday . . . 3		
	Bankrupt Petitions.		Wednesday . . . 4	} The 2nd Seal—Motions and Causes.	
			Thursday . . . 5		
			Friday . . . 6		

Vice-Chancellor Stirling.

Wednesday	June	20	{	The 1st Seal—Motions and Causes.
Thursday	.	21		
Friday	.	22	{	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Saturday	.	23		
Monday	.	25	{	Short Causes, Petitions, (unopposed first,) and Causes.
Tuesday	.	26		
Wednesday	.	27	{	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Thursday	.	28		
Friday	.	29		
Saturday	.	30	{	Short Causes, Petitions, (unopposed first,) and Causes.
Monday	July	2		
Tuesday	.	3	{	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Wednesday	.	4		
Thursday	.	5	{	The 2nd Seal—Motions and Causes.
Friday	.	6		
			{	Pleas, Demurrers, Exceptions, Causes, and Further Directions.

Saturday . . . 7	{ Short Causes, Petitions, (unopposed first,) and Causes.
Monday . . . 9	
Tuesday . . . 10	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Wednesday . . . 11	
Thursday . . . 12	
Friday . . . 13	
Saturday . . . 14	{ Short Causes, Petitions, (unopposed first,) and Causes.
Monday . . . 16	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday . . . 17	
Wednesday . . . 18	{ The 3rd Seal—Motions and Causes.
Thursday . . . 19	{ Pleas, Demurrers, Exceptions, Causes, and Fur. Dirs.
Friday . . . 20	
Saturday . . . 21	{ Short Causes, Petitions, (unopposed first,) and Causes.
Monday . . . 25	
Tuesday . . . 24	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Wednesday . . . 25	
Thursday . . . 26	
Friday . . . 27	
Saturday . . . 28	{ Short Causes, Petitions, (unopposed first,) and Causes.
Monday . . . 30	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday . . . 31	
Wednesday Aug. 1	{ The 4th Seal—Motions and Causes.
Thursday . . . 2	General Petition-day.

CHANCERY CAUSE LISTS.

Sittings after Trinity Term, 1849.

Lord Chancellor.

APPEALS.

Hodgkinson v. Hodgkinson, Ditto v. Ditto.
 Knight v. Majoribanks, Ditto v. Gibbs, appeal.
 Scarf v. Soulbey, appeal.
 Onslow v. Wallis, appeal.
 Cudon v. Morley, appeal.
 Chambre v. Siggers, appeal.
 M'Intosh v. Great Western Railway Co., appeal.
 Attorney-General v. Jones, cause by order.
 Phillipson v. Gatty, Gatty v. Phillipson, appeal.
 Staniland v. Willott, appeal.
 Coward v. Coward, appeal.
 Cooke v. Cholmondeley, Ditto v. Vaux, appeal.
 Cole v. Scott, appeal.
 Rackham v. Siddall, appeal.
 Williams v. Powell, Ditto v. Davis, Price v. Powell, appeal.
 Monro v. Taylor, appeal.
 Duncan v. Luntley, appeal.
 Malcolm v. Scott, 4 causes, appeal.
 Boothby v. Boothby, appeal.
 Fuller v. Bennett, appeal.
 Watson v. Masters, appeal.
 Dodson v. Powell, appeal.
 Hawkins v. Jackson, appeal.
 Hunter v. Daniel, appeal.
 Cowell v. Watts, Watts v. Cowell, appeal.
 Newman v. Hutton, 3 causes, appeal.

Andrew v. Andrew, appeal.
 Marks v. Solomons, appeal.
 Purchase v. Shullin, appeal.
 Attorney-General v. Gibbs, Rock v. Ditto, appls.
 Bagshaw v. East India Railway, Ditto v. Ditto, 2 appeals.
 Masters v. Scales, 5 causes, re-hearing.
 Loader v. Clarke, appeal.
 Miller v. Priddon, appeal.
 Cross v. Sprigg, appeal.
 Sanderson v. Cockermouth and Workington Rail. Company, appeal.
 Griggs v. Staples, appeal.
 Dawson v. Brinkman, appeal.
 Bagshaw v. M'Niel, appeal.
 Attorney-Gen. v. Corporation of London, appeal.
 Padbury v. Clarke, appeal.
 Attorney-General v. Pilgrim, appeal.
 Coleman v. Mellersh, appeal.
 Adams v. Blackwall, appeal.
 Hirst v. Tolson, appeal.
 Tomlinson v. Troughton, Haydock v. Tomlinson, appeal.

Vice-Chancellor of England.

PLEAS, DEMURRERS, CAUSES, EXCEPTIONS, AND FURTHER DIRECTIONS.

To fix a day, Brooke v. London and Westminster Bank, Ditto v. ditto, dem.
 S. O., Attorney-General v. Grainger.
 Coleman v. Fielden, part heard.
 Menlove v. Hogg, Ditto v. Trustees of Liverpool Docks.
 Ditto v. Ditto.
 July 23, Allen v. Wilson.
 June 22, Hobson v. M'Kenzie.
 Burleigh v. Farratt.
 Watts v. Watts.
Part heard, Markeating v. Smith.
Day to be fixed, Barnard v. Earl of Liverpool.
 Lander v. Weston, exons.
 Attorney-General v. Cother.
 Hubbard v. Evans, Ditto v. ditto.
 Wellesley v. Wellesley, Ditto v. Bicknell, Ditto v. Lawson, Countess of Mornington v. Earl of Mornington, Ditto v. Powell.
 Barton v. Dixon, Ditto v. Stears.
 S. O., Roberts v. Roberts, fur. dirs. and costs.
 Evans v. Evans, Ditto v. Williams, exons. 2 sets.
 Evans v. Evans, Ditto v. Williams, fur. dirs.
 Parsons v. Benn.
 Bell v. Hoyes.
 Coxon v. Coxon.
 Hughes v. Pride, fur. dirs. and costs.
 Whitehead v. Cozens.
 Miller v. Huddleston, fur. dirs. & costs.
 Knight v. Cox, ditto and petn.
 Short, Shadbolt v. Thornton, fur. dirs. and costs.
 Gervis v. Gervis, 3 causes, ditto.
 Lindsay v. Perfit.
 Daruley v. Senior.
 Short, S. O., Luck v. Luck.
 Coles v. Dickenson.
 Greensmith v. Johnson, fur. dirs. and costs.
 Coppock v. Dunsford, ditto and petition.
 Haw v. Earles, fur. dirs. and costs.
 Broadmead v. White, ditto.
 Sanders v. Sanders, 2 causes.
 Ditto v. Ditto, fur. dirs. and costs.
 Gates v. Lord Dunboyne.
 Vaughan v. Vanderstegen.
 Gresley v. Jones.
 Jearrad v. Tracy.

Fairfax v. Drought, fur. dirs. and costs.
 Williams v. Williams.
 July 3, Gleadow v. Hall Glass Company.
 Fowler v. Fowler, 3 causes.
 July 6, Pearcy v. Dicker.
 July 12, Beasley v. Snare.
 Attorney-General v. Trevelyan, 5 causes, exons.
 Ditto v. Ditto ditto ditto.
 Short, Pinckney v. Tanner, fur. dirs. and costs.
 Price v. Wadley.
 Cash v. Smith, fur. dirs. and costs.
 Cessarini v. Cessarini, ditto.
 July 9, Parkyn v. Cape.
 July 11, Peto v. Brown.
 July 11, Reeve v. Bourne.
 Smith v. Brewin, fur. dirs. and costs.
 Bear v. Murray, ditto.
 July, 12, Quicke v. Kingdon.
 Short, Hilmer v. Jones.
 Lang v. Lang, fur. dirs. and costs.
 July 14, Fidkin v. Webb.
 July 16, Forward v. Edginton.

Vice-Chancellor Knight Bruce.

CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

Zulueta v. Vincent, demurrer.
 Short v. Mercier, exons.
 Wales v. Bourne.
 Mich. T., Stanley v. Bulkeley.
 S. O., Hughes v. Scarborough.
 May v. Grave, exons.
 Wilkin v. Wingate.
 S. O., White v. Everest.
 Hutchison v. Teycheuné.
 Heath v. Lewis.
 Risk v. Starkey.
 Carrington v. Pall.
 Bradley v. Bycroft, fur. dirs. and costs.
 Stutely v. Wells, 5 causes, ditto, and petn.
 Erett v. Greatwood, fur. dirs. and costs.
 Mendis v. Brandon.
 Bradshaw v. Drake.
 Fowler v. Swaffer.
 Steward v. Davis, fur. dirs. and costs.
 Attorney-General v. Dew.
 Longden v. Wright.
 Shore v. Weekly, fur. dirs. and costs.
 Johnson v. Thomas.
 Green v. Green, Ditto v. Bays, fur. dirs. and costs.
 Aron v. Aron.
 Short, Hudleston v. Whelpdale.
 Thorowgood v. Eddowes, Ditto v. Green, fur. dirs. and costs.
 Rhodes v. Matson, Ditto v. De Beauvoir, fur. dirs. and costs.
 Cheetham v. Sturtevant, 4 causes, ditto and petition.
 Beaumont v. Hennell, fur. dirs. and costs.
 Allett v. Bailey, Ditto v. Wilkinson, ditto and petition.
 Spencer v. Brown, fur. dirs. and costs.
 Jones v. Lewie, 3 causes, ditto.
 Walker v. Broughton, 2 causes.
 Scarth v. Charlwood.
 July 7, Harpur v. Greaves.
 Webb v. Ledicott, fur. dirs. and costs.
 Staveley v. Hutchinson.
 Phillips v. Beynon.
 Norgate v. Baron Thurlow.
 Paschoud v. Chapman.
 July 6, Good v. Good.
 June 30, Parratt v. Parratt.

July 2, Todd v. Sims.
 Moriarty v. Paterson, fur. dirs. and costs.
 July 2, Alston v. Blake.
 Barnard v. Papineau, Ditto v. Bond.
 July 5, Fell v. Groom.
 Spooner v. Payne, eqy. read. and costs.
 Robinson v. Geldard, fur. dirs. and costs.
 Lockwood v. Laird, ditto.
 Bird v. Blyth, 5 causes, ditto.
 Turner v. Maule, Ditto v. Turner, fur. dirs. and costs.
 July 9, Jillaed v. Edgar.
 Lyon v. Baker.
 Ford v. Ruxton, 3 causes, fur. dirs. and costs.
 Seton v. Waller, 3 causes, ditto.
 July 12, Williams v. Miller.
 Short, Kenion v. Taylor, Ditto v. Yates, 2 causes.
 July 13, Wake v. Wake.
 July 13, Hawkins v. Spencer.
 July 13, Thomas v. Hall.
 July 13, Savage v. Robertson, 2 causes.
 Powell v. Taylor.
 Castle v. Porter.

Vice-Chancellor Stigram.

CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

Tamlyn v. Crang, dem.
 Chandler v. Corko.
 Attorney-General v. Murdock.
 Dott v. Hoyes, Hoyes v. Kindersley, Gillan v. Hoyes, part heard.
 Dyer v. Sturgis.
 S. O. G., Ward v. Swift, fur. dirs. and costs.
 Marquis of Londonderry v. Ovingdon, 3 causes.
 Marshall v. Jewson.
 Osborn v. Garrard.
 Challis v. Harria.
 Bliss v. Brady.
 Coventry v. Earl Lauderdale, Ditto v. Coventry, exons. and fur. dirs.
 Field v. Bentley, fur. dirs. and costs.
 Howard v. Reynardson.
 Mayall v. Milae.
 Bensusan v. Nehemias, Ditto v. ditto.
 Sentance v. Porter, fur. dirs. and costs.
 Edlin v. King, Ditto v. Stansfield.
 Ramsford v. Griffiths.
 Hughes v. Stable, Piper v. Do., Hughes v. Savery, fur. dirs.
 Bond v. Harvey, ditto.
 Woodhouse v. Surtees.
 Jackson v. Courtney.
 Hewey v. Chapman.
 Miller v. Smith, fur. dirs. and petn.
 Coope v. Carter, 3 causes, exons., and fur. dirs.
 Costobadie v. Costobadie, fur. dirs. and costs.
 Foster v. Foster, ditto.
 July 2, Williamson v. Plumer.
 Taylor v. Taylor, 4 causes, fur. dirs. and costs.
 July 6, Ford v. Robinson.
 Vincent v. Bishop of Sodor and Man, fur. dirs. and costs.
 S. O., Wait v. Mason.
 July 7, Chalk v. Racine.
 Whipple v. Martin.
 July 11, Dixon v. Pyner.
 Ditto, Clay v. Clay.
 Ditto, Ditto v. Brook.
 Short, Attorney-General v. Croft.
 Oliver v. Oliver, fur. dirs. and costs.
 Short, Phillips v. Phillips.
 July 16, Dickenson v. Taylor.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, JUNE 30, 1849.  
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BANKRUPT LAW CONSOLIDATION. BILL.

PERHAPS no measure, totally independent of political or party considerations, ever obtained a greater degree of attention from the public, the legal profession, and the legislature, than the Bankrupt Law Consolidation Bill, brought down from the House of Lords, and now referred to a Select Committee of the House of Commons. The care and attention bestowed upon the bill, however, have not been more than commensurate with the importance of the subject, and with a due regard to the nature and effect of the changes proposed to be made in the existing law. Many of the contemplated alterations affect proceedings which have no immediate connection with the practice in bankruptcy, and which would not be looked for in a bill with such a title. By way of example, we may refer to the alterations proposed in the new bill with respect to filing warrants of attorney and cognovits.

By the 3 Geo. 4, c. 39, warrants of attorney or cognovits not filed within 21 days after the execution thereof, or judgment not having been entered up within that time, are declared to be fraudulent and void against creditors under a bankruptcy; but it is now proposed to extend this provision, and to make warrants of attorney and cognovits, given by traders and not filed within twenty-one days, void against *all* creditors, to all intents and purposes *whatever*, although there should be no bankruptcy, and although judgment should be entered up within the time specified; The following is the article by which this change is intended to be effected:—

“If after the commencement of this act any warrant of attorney to confess judgment in any
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personal action, or any cognovit actionem in any personal action, shall have been given by any trader, and such warrant of attorney or cognovit actionem, or a true copy thereof, shall not have been filed with the clerk of the docket and judgments in the Court of Queen's Bench within twenty-one days next after the execution thereof, in manner and form provided by the act, (3 Geo. 4, c. 39,) every such warrant of attorney and cognovit actionem shall be deemed fraudulent, null, and void, to all intents and purposes *whatever*; and if any such warrant of attorney or cognovit actionem which shall be so filed as aforesaid shall have been given subject to any defeazance or condition, such defeazance or condition shall be written on the same paper or parchment as which such warrant of attorney or cognovit actionem shall be written, before the time when the same or a copy thereof respectively shall be filed, otherwise such warrant of attorney or cognovit actionem shall be null and void to all intents and purposes *whatever*.”

The distinction between traders and non-traders is at best an arbitrary distinction, and if it be expedient that assurances, of the nature of warrants of attorney and cognovits, should be filed in order to give them validity when executed by traders, it would be desirable, if it were only for uniformity, that the same principle should be applied to persons executing instruments of this description who are not traders within the meaning of the Bankrupt Laws.

The proposal contained in the bill, to put judges' orders, under which the plaintiff is at liberty to sign judgment or issue execution, in the same category as secret warrants of attorney and cognovits, is altogether new. The “article” is in these terms:—

“Every judge's order made by consent, given after the commencement of this act, by any trader defendant in any personal action, and whereby the plaintiff in such action shall be authorized forthwith after the making of such order, or at any future time, to sign or enter

up judgment, or to issue or take out execution in such action, and whether such order shall be made subject to any defeazance or condition or not, in case the action in which such order shall be made shall be in the Court of Queen's Bench, or a true copy of such order in case the action wherein the same is made shall be in any other Court, shall, together with an affidavit of the time of such consent being given, be filed with the clerk of the docquets and judgments in the said Court of Queen's Bench within twenty-one days after the making of such order, in like manner as a warrant of attorney in any personal action and a cognovit actionem given by any defendant in any personal action, or copies thereof and affidavits of the execution thereof respectively, may be filed with the same clerk within the space of twenty-one days after such warrant of attorney or cognovit actionem shall have been executed, otherwise such judge's order, and any judgment signed or entered up thereon, and any execution issued or taken out on such judgment, shall be null and void to all intents and purposes whatever; and the provisions respectively contained in the acts (3 Geo. 4, c. 39, and 6 & 7 Vict. c. 66,) for liberty to file warrants of attorney and cognovits actionem, or copies thereof, with the said clerk, and for the said clerk to make certain entries and search in relation thereto, and for entering satisfaction thereon, and for fees for search and filing and taking offices copies, shall extend and be applicable to every such judge's order, in like manner as to warrants of attorney and cognovits actionem mentioned in the said acts."

"A heavy blow and great discouragement" is threatened in the bill to proceedings by action against traders for debts, by enacting, that the levy under an execution in such cases is to be deemed conclusive evidence of an act of bankruptcy, provided a petition for adjudication shall be filed against the trader within one month, and this although the execution may be levied *bond fide* at the suit of a creditor to whom the law affords no other means of redress. The article by which effect is sought to be given to this very questionable provision is in these words:—

"The levy by seizure and sale, or by seizure only, under any execution against or affecting the goods and chattels of any trader, such execution being founded upon a judgment obtained by the plaintiff in any action personal, brought after the commencement of this act, for the recovery of any debt or money demand in any of her Majesty's Courts of Record, against such trader, shall be accounted and adjudged conclusive evidence of any act of bankruptcy committed by such trader at the time of the seizure under such execution, provided a petition for adjudication of bankruptcy shall be filed against such trader within one month from such seizure, and he be thereupon

adjudged bankrupt; and in such case the property seized under such execution, or the full value thereof, or the proceeds thereof, if the property shall have been sold before notice given to the plaintiff in such action, or to the sheriff, of the filing of the petition for adjudication of bankruptcy, shall be forthcoming to and recoverable by the assignees of the estate and effects of such bankrupt from the plaintiff in such action, or in the event of such goods or chattels not having been sold, or (if sold) of the proceeds thereof not having been paid over to the plaintiff, before notice to the sheriff of the filing of the petition for adjudication of bankruptcy, from the sheriff or from the plaintiff, at the option of the assignees; and the plaintiff at whose suit such execution shall have been sued out shall be paid rateably with the other creditors of the bankrupt: Provided always, that such plaintiff shall have preference for payment, out of the property seized under such execution, of the costs and expenses as between attorney and client, *bond fide* incurred by him in obtaining such judgment and execution: Provided also, that no plaintiff shall be entitled to such preference for payment of costs and expenses in any case where the execution shall have been founded on a judgment on a warrant of attorney or cognovit actionem given by the trader by way of fraudulent preference of the plaintiff, or on a judgment signed under a judge's order, such judge's order having been obtained by consent given by the trader by way of such fraudulent preference."

The framer of this article appears to have had some misgivings as to the justice of throwing upon a diligent creditor, who realised the amount of his judgment, the costs of the only course of proceeding to enforce his claim which the law permitted, and it is therefore proposed that the execution creditor shall have a preferential claim upon the property seized under execution for his costs as between attorney and client. How, or against whom, this claim is to be enforced, is not stated, but the succeeding article (114) points out the course to be pursued by assignees to recover the goods of a bankrupt taken in execution or the proceeds thereof, as explained in the article last cited. If passed in its present shape, it will create a new branch of practice in the Courts of Law: it is as follows:—

"The remedy for recovery of any such goods and chattels as are referred to in the last preceding article, or the value thereof or the proceeds thereof, (as the case may be,) shall be had and taken by the assignees in the Court in which any such judgment shall have been obtained, upon motion or summons for a rule to show cause; and it shall be lawful for such Court or judge to make absolute or discharge such rule, or allow or dismiss such motion, (as the case may be,) and to direct the costs of the

application to be paid by either party, or to make such other order therein as to such Court or judge shall seem fit: Provided always, that any order made by a judge as aforesaid may be discharged or varied by the Court, on application made thereto by either party dissatisfied with such order: Provided further, that such judge may, if he shall think fit, direct an issue to be tried in such court and in such manner as he shall think fit, and that he shall decide according to the verdict returned."

We presume it is intended that the execution creditor, who has the unsatisfactory alternative imposed upon him of paying over to the assignees the proceeds of an execution levied *bond fide*, is also to apply to the Court, or a judge, to be allowed his costs fairly incurred in obtaining judgment and execution. Where the judgment is founded on a warrant of attorney, *cognovit*, or judge's order given by consent, however, it seems the Court or judge will have to try upon affidavit the question whether any such security was given to the execution creditor by way of fraudulent preference. It is surely deserving of serious consideration, whether questions of this nature can be so disposed of satisfactorily?

The effect of these clauses, however, is comparatively insignificant, when compared with the changes which the bill proposes to introduce in the law, with respect to transactions between persons unable to meet their engagements and all others. Not only is it declared (by article 106) that any trader making a secret transfer of any of his goods or chattels shall be deemed to have committed an act of bankruptcy; and that any transfer by way of sale, pledge, mortgage, or otherwise, not followed by a *bond fide* removal of the property, within one month after the date of the transaction, or two months before a petition for adjudication of bankruptcy, shall be taken to be a secret transfer; but it is also proposed to provide, that every *payment* and every *delivery* or transfer of goods made by or for a bankrupt, within two months of his bankruptcy, other than in the ordinary course of trade, to or for any creditor, whether such payment, transfer, or delivery shall be made voluntarily or under pressure, shall be deemed a fraudulent preference, and be void against assignees, with the proviso, however, that no *bond fide* purchaser or holder, without notice of the fraudulent preference, shall be liable in respect thereof to assignees. By a subsequent article, (art. 182,) every conveyance and equitable mortgage given by a bankrupt in respect of an antecedent debt, within two months of his

bankruptcy, such bankrupt being unable to meet his engagements, is to be deemed fraudulent and void as against his assignees, whether made voluntary or under pressure, and in contemplation of bankruptcy or not, unless such conveyance or equitable mortgage be given "in pursuance of an agreement in writing made at the time of contracting the debt." And as the person to whom the conveyance or equitable mortgage is given may part with the property conveyed or charged to some person whose title cannot be legally impeached, it is provided—

"That the full value of such property, or of so much thereof as shall have been so parted with, shall be forthcoming to and recoverable by such assignees in actions of debt or on the case upon promises, as so much money had and received to the use of the assignees, and such last-mentioned actions shall in such case be sustainable either against the person to whom any such conveyance or equitable mortgage shall have been made and executed or given, (as the case may be,) or against any person who shall have parted with such property, and who if he had not parted with the same would have had no right to retain the same as against such assignees."

Without staying to comment upon these provisions, we think the mere recital of them goes far to justify the statement of Lord John Russell, that, whatever amount of consideration the measure obtained during its progress through the Upper House, its enactments are too extensive and important to render it possible that the other branch of the legislature could, without a surrender of its most useful functions, adopt them, until time has been afforded for minute inquiry and deliberation. Conceding that the bill is, on the whole, a valuable improvement on the existing law, still no measure has for some time been brought before parliament where there is less reason for impatience or precipitancy. The suggestion thrown out at one period, and speedily retracted, that some individuals, or a body of persons, had an interest in obstructing, and were determined to impede, the progress of the bill, is simply ridiculous, and the urgent pressure applied in more than one quarter to pass the bill, without even the ordinary delay and consideration which a measure of this description may be expected to receive from the House of Commons, creates the suspicion that some job—greater or smaller—is concealed and may be discovered in the bill.

In the changes which are taking place in the Law of Debtor and Creditor, it is remarkable that our legislators are in

several respects retracing the steps from which they departed. Amongst others, the merchants of London have expressed their deep regret that the Bankrupt Law Amendment Bill does not give the power of arrest *on meane process*, (properly guarded against abuse,) which they believe to be indispensable to check the progress of reckless and fraudulent trading in its early stage. We have also now to direct attention to a petition just presented from "The Liverpool Guardian Society for the Protection of Trade," in which a modified power to arrest fugitive debtors is suggested. The petitioners state—

"That it would be of the highest service to the mercantile interests of this country if power were given to local authorities, such as the Commissioners in Bankruptcy, the Judges of the County Court, or mayors of corporations in large towns, to arrest or detain, for a limited period, fugitive debtors, until proceedings in bankruptcy or at common law could be taken against them.

"That the want of such a power is deeply felt in most seaport towns, but chiefly in Liverpool, where the greatest facilities are afforded for parties to quit the kingdom, and the least facilities are provided for their detention; and, consequently, fraudulent debtors generally succeed in defrauding their creditors by making Liverpool their place of departure, relying securely on their creditors being delayed several days in obtaining any process for their detention."

THE ATTORNEYS' CERTIFICATE DUTY.

In the debate on the Budget, on June 22nd, Lord Robert Grosvenor expressed his sincere regret that his right honourable friend, the Chancellor of the Exchequer, had held out no hope of repealing that most unjust, most oppressive and iniquitous tax, the Attorneys' Annual Certificate Duty. He assured the House, whatever they might think of it, this tax was an onerous burden upon many respectable and worthy persons. He had been very lenient to the right honourable gentleman last year, but it was his duty to inform him that the parties who suffered under it were resolved to endure it no longer. He had been hoping every night for some time past for an opportunity of bringing the subject before the House; it must now be pressed on, and whenever he did so he gave the right honourable gentleman fair warning, to spare both of them the trouble, by surrendering with a good grace, for he could assure him that such a

case of injustice would be established as must compel him to remove this restriction on the exertions of a highly useful, meritorious, and he would add powerful class. They ought not to be subject to so odious a tax.

It must be gratifying to the profession to witness the earnestness and force with which their cause has thus been advocated by a member of the Legislature of so much importance and of such high rank, as the noble representative for the Metropolitan County. The case is wisely entrusted to his hands, and we have no doubt of ultimate success. It can scarcely be expected to carry the repeal in the present Session: Truth and Justice are of slow progress, but attention is now fully awakened to the subject. It must ere long be decided, and seeing the manifest equity of the claim, we cannot fear the result. There may be an occasional sneer at the demand of lawyers to be relieved from burthens which they are mistakenly supposed to be well able to bear; but under judicious management, and supported as the cause now is by the power and influence which have been secured, it must prevail. It is now late in the Session, and hints have been given of a prorogation earlier than usual; but we still hope for an effective demonstration, preparatory at least to an early opening of the next campaign.

STATE OF THE PROFESSION.

AN able article on the State of the Profession appeared in the last number of the *Law Review*, to several points of which we wish to direct the attention of our readers, and regret, indeed, that circumstances have prevented our earlier notice of the subject.* The writer observes upon the rapidly increasing number of both branches of the profession, and the devices which the rest of mankind are falling upon to do without them, as shown in the numerous commissions and offices having judicial functions, which have been created during the last 20 years. And then he observes—

"Internal jealousies, the constant accompaniment of such a state of things, are rife with us, which is shown in the struggle growing up (we see no good reason for disguising it) between the two principal divisions of the Legal profession for position and profit, or, as the

* A recent article in the *Jurist* also demands attention, bearing on the objects of The Metropolitan and Provincial Law Association.

profane would say, for place and plunder. The Attornies desire to participate more largely in the dignity, the patronage, and the professional recognition which hitherto have been accorded to Barristers. The Barristers find not only these important matters but their very life blood, their revenues, without which neither life nor honour can live, in the world as at present constituted, encroached upon by the growing importance, justified by the improved intelligence, activity, and respectability of the Attornies. As in most other cases, the battle-cry does not disclose the true nature of the conflict. The modesty of the combatants forbids the avowal of it, even if it have been so well considered as to be fully known, and it remains for some disinterested bystander to act the part of mediator and arbitrator, to show to each party the true nature of its position, and by his kind offices to reconcile their mutual interests, lest the public, whose servants they are, may, out of their quarrels, find cause to discard or to dishonour both."

The reviewer then intimates his purpose of undertaking the task thus announced, and, in the first place, he proceeds to indicate the difficulties by which the subject is surrounded. He observes that—

"The prominent difficulty in the case is the assumption of pre-eminent dignity on the part of the Bar, and the enjoyment in a more certain degree of the main sources of dignity, the money returns, on the part of the Attornies. There can be no worldly dignity without revenue; and revenues in the possession of the well-educated, the intelligent, the well-conducted patron, cannot be without much dignity, or what in the world passes for such. The problem is to abate somewhat of the assumption on the part of the Barristers without sacrificing the reality, and cordially to admit as fellows of the craft not the lower, but the more active members of the profession. If some energy, skill, and discretion be not directed to this end, the Bar will, as a body, soon occupy the same position as that of the House of Lords in relation to the House of Commons,—a result which will be as prejudicial to the public as it will be to both branches of the profession, and one therefore which we contemplate with dismay; but we state the matter thus plainly: that others may look at it, as we for a long time have done, full in the face. The events of the last year have told us all, in many ways, that it is not by shutting our eyes to the fact that we can rob it of existence, but that we must seek to modify and regulate circumstances by timely statesmanship. Like the working of other problems of social life, the working of this must needs be slow, (perhaps slower than the emergency demands); for it would be as inconsistent with probability that all empty heads at the Bar should part at once or readily with their sole pretension, and inconsistent with all prudence that those members of the Attorney craft, who are specially recognised by their

brethren as fellows, should be welcomed as fellows among the Bar, who, from higher education, and some other causes, have natural as well as professional claims to peculiar respect."

In several articles of this able journal, we have been much gratified in noticing the candid and liberal acknowledgments which are made of the laudable means adopted by the attorneys and solicitors, as well to uphold their own character, as to afford opportunities to those who may succeed them of still further improvements in legal education, professional attainments, and honourable practice. The writer before us thus proceeds:—

"It is now some years since the *élite* of the Attornies took measures to secure the respectability of their profession, by requiring of its members a good professional education, which has already produced a very marked improvement among them; while, as we are all aware, the improvement of education generally, especially among the middle classes, has conferred upon the middle classes advantages which the public schools and universities have not always accorded to the higher classes. The natural boundaries of the two branches of the profession are therefore falling away, and if the division of labour is continued, it must be on principles founded upon what Mr. Squat would call the nature and fitness of things. The Attorney is no longer (if he ever was) the creeping servile thing which it delighted the authors of older plays and novels, and some of their modern plagiarists, to describe the scrivener of former day to be. He holds up his head with the best, and bonds it only with the courtesy which every gentleman will accord to others, according to the expectations which their station entitles them to entertain, or according to the better right which they acquire by their conduct."

The division of professional labour between the two branches of the profession is next adverted to, and it is observed, that when the necessity which first established this division ceased, convenience recommended its continuance.

"The more practical or mechanical duties requires, not so much a different order as a different kind of mind, from that which the theoretical or intellectual requires. And it is not only a different kind of mind which is requisite, but a different kind of habit. In one it must be reflective or speculative, in the other active or practical. This division is clearly becoming less and less necessary. General education confers correct habits of thought and ready apprehension, which go a great way to make a good lawyer. It is not difficult to superadd the technical knowledge, which, in spite of many hindrances, is rapidly becoming more simple and manageable, besides which,

(in its present state), it is more easily learnt and impressed on the mind by practice than by reading, so that the practitioner has less and less need of his intellectual aid, the Barrister or Advocate. Indeed, a well-organised office can to a very great extent dispense with the services of the Bar, except for those matters in which the presence or the signature of the Advocate is required, or for matters of rare occurrence. The addition of one or two intelligent young men of speculative, reflective minds, in short, of those qualities which go to make good chamber counsel, in addition to those more active men of active habits, which go to make the good practitioner, will serve his purpose, unless he require to relieve himself from responsibility by obtaining the opinion of counsel, as a special justification for his client. In the great offices especially, the division of labour that obtains among the partners and principal managing clerks, to whom considerable salaries are often given, enables the practitioner to accomplish the entire range of legal business.

"On the whole, we regard it more as a question of interest to the Barrister than to the Attorney, whether the duties of the two branches, as at present conducted, should be mingled. In most professions and businesses the majority of those who have realised fortunes will be found to have derived their gains in no inconsiderable measure from participating in the profits of the routine or mechanical parts of it; of the constant as distinguished from the exceptional or the occasional. Men of good fortune, or of moderate competence, who can afford to wait, do not feel the difficulties of the case further than that from insufficient occupation their faculties are permitted to rust, and more energetic people pass them. Men of commanding abilities, with opportunities of display, feel it somewhat less, and thrive here as they would thrive anywhere. But the majority of professional persons, not cleverer than their compeers, in these clever days, feel it wofully. It is said that a high legal personage observed, in reference to the number of candidates for the office of Judge in the new County Courts, that nothing gave him so much pain as to find how poor, in pecuniary circumstances, the Bar was as a body."

We agree with our learned contemporary that, notwithstanding this state of things, there is no cause for despair.

"We believe," he says, "that if the members of the Bar would cast aside petty jealousies of their fellows of the same degree, earnestly consider what is necessary to make the profession, in a far greater degree than it now is, an intellectual and honourable calling, worthy of men of genius and science, and frankly admit the members of the other branch to the status which they have won by their intelligence and by their efforts to elevate the character of their fellows, the task would not be difficult. Let the right spirit be evoked, and we doubt not

that the force of opinion will have its usual results."

The *Law Review*, as the constant advocate of the amendment of the law, naturally contends for a large measure of reform in our ancient institutions, and we must acknowledge that the proposed remedial scheme is a very liberal and comprehensive one. The example of the Inns of Court of excluding attorneys and solicitors is distinctly eschewed, and the door is thrown open to all branches and classes of the profession. The following is an outline of the proposed remedies:—

"We will say nothing of a Minister of Justice, or of a Law University, or of a better manner of publishing Law Literature, which have been mentioned and discussed on other occasions; all powerful and necessary means for the entire and permanent well-doing of the profession. Our immediate remedy would be the union of the two branches of the profession, without destroying any present institution, or altering, at present, the status of either branch. Let a Law Club or Society be established, into which should be admitted all Judges, Benchers, Queen's Counsel, Serjeants, Judges of County Courts, Police Magistrates, official Lawyers, Members of the London Law Societies, Clerks of the Courts, principal officers of the Superior Courts, and afterwards let members, of whatever rank or degree, be admitted by ballot.

"The point of union would be, by well organizing the society as a species of legal aid and assurance, to have a complete library, and to afford other means of giving readily to members any information which they may require for their professional or official occasions.

"Every member should, if possible, be an officer, charged with some division of duty, in that wide and trackless field—our law as it is now—so as to give him a natural and ordinary means of intercourse with his fellows, and at the same time afford the best chance of leaving no point unprovided for. Taste, or occupation, or previous pursuits, would dictate the part which each would seek.

"To the library might be added readings of New Statutes, and the most important decisions with discussions thereon, after the manner of our literary societies, with the view to obviate the difficulty that most men in practice find in keeping pace with the changes in the law by legislation.

"A school consisting of the pupils and clerks of the members of the profession would give occasion for and constancy to these demonstrations, and, by employing the scholars in the collection and preparation of the material, and in the labours of the library, indirectly afford assistance to those members of the profession whose time and attention are already occupied with the labours and cares of business, and to whom the scholars stand in the relation of junior assistants, pupils, or clerks, while the scholars, thus practically engaged, would ac-

quire more clear, distinct, and definite views than are to be derived from the dogmatic form of teaching, or the looser commentary or lecture.

Joint committees of both houses, or, to speak more literally, of both branches of the profession, might consider projects of amendment. Of the practicability, utility, and convenience of such a combination, we have a type in the Law Amendment Society, which numbers amongst its members not only lawyers of each branch, but of each part of the kingdom, and, besides that, legislators of both houses, and merchants and men of business. Whether the club should admit laymen of the same kind to a limited extent, and under conditions, would with many be a doubtful question, as involving disclosure of the mysteries of the craft. We should incline to the franker course, by which we feel assured not only much valuable aid and intelligence would be obtained, but more assured recognition and support among the other classes of the people, and by the legislature of the country. We should hope to see the Law Amendment Society swallowed up and its exertions continued in an institution of this comprehensive character.

"The next point would be to establish a Court of Honour, or Court Legal, answering to the Court Martial, for adjudicating upon cases of alleged misconduct, with power to inflict the penalty of disbarring, striking off the rolls, disqualifying for office, or censure, subject to appeal to the Courts.

"Perhaps, however, incidental to this, or independent of it, there should exist some administrative body to settle all points of practice relative to fees, such as that of retainers, which has lately been under discussion,—a sort of mixed tribunal, consisting not of solicitors only, but of judges, barristers, and solicitors; a certain number of county court judges, and others removed from actual practice—forming a comparatively disinterested body,—might form a part of it as a quorum. The retired judges might be induced to take part.

Other suggestions are added, and details and illustrations given, which we must defer to another opportunity. In the meantime, we recommend the whole article, from which we have made these extracts, to the attentive perusal of our readers; and we shall, ere long, be prepared to discuss the various propositions it contains,—in regard to some of which we may point out some practical difficulties not easily to be overcome; but we feel assured that the best interests of both branches of the profession will be promoted by a full and candid discussion of the subject in all its bearings, and we shall gladly lend our aid, assisted as we are by many valuable contributors, towards a satisfactory result.

NOTICES OF NEW BOOKS.

The Law of Property, as arising from the relation of Husband and Wife. By SYDNEY SMITH BELL, Esq., of Lincoln's Inn, Barrister-at-Law. 1849. Maxwell & Son. Pp. 585.

THE Law relating to Husband and Wife appears to be a very attractive subject to several of our learned writers. The principal modern work on this important branch of law was Mr. Roper's well-known treatise, of which a second edition appeared in 1826, by Mr. E. Jacob, then the learned reporter and afterwards the eminent Queen's counsel. The next publication was that of Mr. Shelford, comprising the statutes recently passed on marriage and divorce, including voluntary separation between husband and wife, the husband's liabilities, &c. Then came the 1st part of Mr. Macqueen's work, reviewed in our 35th volume, page 109, and the 2nd part, which completed that very able treatise, noticed at page 99, *ante*.

It appears that Mr. Bell, the present author, some time ago entertained the idea of a new edition of Roper, but he informs us that, on close examination, he discovered that Roper's work was inferior, both in language and arrangement, to his Treatise on Legacies, and that Jacob had left the original text untouched and kept his own contributions distinct—so that the reader had to adjust for himself any difference or inconsistency between the author and editor. Mr. Bell, therefore, determined to prepare an original work, giving a uniform account of the law, reconciling the matter of Roper's text with Jacob's additions, and incorporating the whole with the statutes and decisions down to the present time.

In reference to the two works on the same subject which have recently appeared, Mr. Bell offers an apology to the profession for "putting them to their election" between those and a third. It appears that he began his book a considerable time ago; but an engagement to assist in preparing for government a variety of model bills, which were subsequently passed into those acts known as the different "Clauses Acts," obliged him to suspend his labours entirely; and when he resumed them, the calls of practice and the discharge of his official duties in the House of Lords, retarded his progress so much that, though the first to occupy the field, he found others had come upon it; but, inasmuch as neither of the works to which he alludes seemed to him entirely to supply the place which this was

intended to fulfil, he did not think it necessary to withhold it from publication.

The profession, no doubt, gains by this rivalry of authors in the discussion of the abstruse and doubtful parts of the law—each presenting his own view and offering his own illustrations; but, for the most part, the learned writers alike supply their readers with all the information to be collected from the Statutes and Decisions,—those sources which are open to all who diligently study and carefully digest and arrange them. It would be a task of no pleasant kind to compare these rival works, either chapter by chapter and section by section, or by any general or sweeping commentary. Our space will not permit it, and our readers can scarcely require it at our hands. For the most part, we must necessarily confine ourselves to the statement of the scope and objects of each work. Our readers, unlike the public in general, are well acquainted with the general state of the branch of law under consideration, and our duty is performed by laying before them the result of the author's labours in collecting and classifying all that exists on the subject.

Mr. Bell's work is well arranged. The 1st part treats of the rights and liabilities arising *by law* from the relation of marriage. The 2nd part of rights and liabilities arising to husband and wife from *contract or gift*. Then the 1st part is divided into eight, and the 2nd part into five books. The sub-divisions are as follow:—

The first book is confined to the effect of marriage on the *prior* acts of husband and wife. 1. With third parties. 2. *Inter se*.

The second book comprises the validity of acts done by the wife *during coverture*.

1. General contracts. 2. Trading by wife under custom of London. 3. Domestic contracts for use of family. 4. Contracts of wife for supply of necessities to her own use. 5. Acts of married woman as executrix. 6. Liabilities of wife in respect of her acts prior to and during coverture. 7. Liabilities of the husband in respect of acts of the wife prior to and during coverture.

The third book treats of rights given by the marriage to the husband in the *personal* property of the wife:—

1. Rights acquired by the husband in the personal property of the wife in possession. 2. Rights acquired by the husband in the choses in action of the wife. 3. Rights acquired by the husband by the marriage in the chattels real of the wife. 4. Rights enjoyed by husband over property held by wife in representative cha-

acter; as executrix or administratrix. 5. Equity of the wife to a settlement out of her personal property.

The fourth book enters upon the *real* property of the wife.

1. Rights in her real property retained by the wife during her coverture. 2. Rights in wife's real property acquired by the husband through the marriage—before issue born. 3. Right in wife's real property acquired by the husband through the marriage as tenant by the curtesy—after issue born. 4. Power of the husband to bind or affect the real property of the wife. 5. Alienation by husband of wife's freehold lands.

The fifth book states the rights of the wife acquired by the marriage in the property of the husband.

1. Rights of the wife in the property of the husband—during the coverture. 2. Rights acquired by the wife by the marriage in the personal property of the husband—to be enjoyed after coverture has terminated.

The sixth book relates to the rights of the wife in the real property of the husband after the coverture has terminated.

1. Nature of the estate of dower, and the different kinds of it. 2. What kinds of property of the husband the estate of dower attaches upon. 3. Of the title to dower. 4. How rights of widow in her dower, and of third parties holding interposed estates are adjusted. 5. On election by the widow as to taking her dower, when one of two properties is subject to it. 6. Rights as to dower when the widows of consecutive owners claim it out of the same lands at the same time. 7. Assignment of settling out of dower. 8. Powers and rights of dowress. 9. Liabilities of the dowress. Proceedings for recovery of dower at law and in equity. 11. What the widow shall recover for time bygone, if put to sue for her dower. 12. Of the bar to dower under the Statute of Uses and under the Dower Act, 3 & 4 W. 4, c. 108. 13. Of the legal bar to dower by jointure under the Statute of Uses. 14. Of the assignment of outstanding terms as a means of defeating the estate of dower. 15. Of the bar to dower by the form of conveyance taken to the husband in cases not coming under the Dower Act. 16. Of the mode, prior to the Dower Act, of barring dower after marriage by conveyance of husband and wife. 17. Of the bar to dower by the husband's fee with proclamations. 18. Of the bar to dower by the treason of the husband. 19. Of the bar to dower by acts of the wife. 20. Of the bar to widow's freebench out of copyhold lands. 21. Of the effect of alienation by the dowress of the lands whereof she is endowed. 22. Of the bar to dower by the acts of third parties.

The seventh book comprises the interest which husband and wife take in property

from the legal effect given to particular terms of gift or limitations of property.

1. Of the interest which husband and wife take in property the subject of gift or devise to them, or to third parties in conjunction with them. 2. Of the legal effect of bequests to "next of kin," &c., as regards the right of husband or wife to take under them.

Book the eighth treats of the power of a married woman to make a will.

The 2nd part, comprehending the rights and liabilities arising to husband and wife from contract or gift, is arranged as follows: The first book relates to settlements by the husband upon the wife, made *prior* to marriage.

1. Cases in which the settlement is treated as the price paid by the husband for the wife's property. 2. Whether delivery of the wife's property, purchased by the husband's settlement, is postponed until performance of his covenants in the settlement. 3. Of the husband's covenant before marriage to settle a sum upon the wife, or leave or pay her a sum at his death. 4. Validity of settlement by the husband upon the wife before marriage as against the creditors of the husband. 5. Validity of settlement of real property by the husband upon the wife before marriage, as against purchasers from the husband. 6. Of the power to revoke, before marriage, a settlement made in contemplation of it.

Book the 2nd treats of settlements by the husband upon the wife made *after* marriage.

1. Settlement after marriage, how far binding upon the wife. 2. Validity of settlement after marriage against the creditors of the husband, when made in performance of agreement entered into prior to marriage. 3. Validity of settlement after marriage against creditors, when made as a voluntary act of the husband. 4. Settlements made by the husband upon the wife after marriage, for valuable consideration given by the wife or her friends. 5. Of the settlement to be made under 4 G. 4, c. 76, where marriage has been celebrated in contravention of that statute, as to age and consent of parents or guardians. 6. Of the provision for the wife's personal comfort and ornament, made before or after marriage, and known technically as "pin money."

The third book is limited to rights arising to husband and wife under gifts *inter se* or from third parties.

The fourth treats of property settled or given to be enjoyed by the wife as separate estate.

1. What form of settlement or gift will create a separate estate in the wife. 2. Separate estate created by power reserved by the wife before marriage. 3. Trading by wife for

her separate use. 4. The amount of interest which the wife takes under particular terms of settlements or gifts of separate estate. 5. Disposition by the wife of property settled or given to her separate use, where the settlement or instrument of gift does not contain any restraint of the power of alienation. 6. Of the restraint against alienation of property settled to the separate use of a married woman. 7. Liability of separate property of the married woman for payment of her debts.

The fifth book relates to agreements for separation of husband and wife.

1. Of the nature of the agreement by which separation of Husband and wife can be accomplished, and how and to what extent it will be enforced. 2. Of the consideration necessary to support the covenant for separate maintenance. 3. Liability of allowance for separate maintenance of wife for her debts and obligations. 4. Of the power to put an end to the liability under a covenant for separate maintenance by determining the separation.

THE PALACE COURT AND SMALL DEBTS AMENDMENT BILL.

THE Attorney-General has brought in his bill to abolish the Palace Court and other Inferior Courts, and to amend the Small Debts or County Court Act. It has not yet been printed, but it will probably be in substance as follows:—

The Palace Court will be abolished, and compensation given to the judge, the counsel, the attorneys, and officers of the Court. We understand that much of the supposed difficulty of arranging the amount of compensation has been removed by a very reasonable proposition made by the attorneys of the Court, with reference to the principle of the present compensation, making due allowance for the last. There is also another local Court, the business of which had largely increased, at Peterborough in Derbyshire. This is also to be abolished, along with any other remaining Courts not already merged in the County Courts.

However desirable it may be that uniformity in these Small Debt Courts should prevail, and though we admit that, if the principle on which they are established be right, it ought to be fully carried out, we cannot refrain from repeating that the County Courts do not answer the demand of the public; so long as the parties are obliged to attend personally, and are not allowed to have professional aid, except at so low a rate as to preclude respectable practitioners from attending.

The new bill, we understand, will comprise some amendments of the Small Debts

Act, but none that will meet the full amount of the public and professional objection to which we have referred. Authority will be given to the judge in the Superior Court, on the trial of a case where the claim, originally above 20*l.*, has been reduced below it, to certify whether the plaintiff should or not be deprived of his costs, without the necessity of an application to enter a suggestion on the Roll.

PERPETUAL COMMISSIONERS.

Appointed under the Fines' and Recoveries' Act.

Adams, William, Tenbury, in and for the county of Worcester. June 1.

Corser, Charles, Wolverhampton, in and for the county of Stafford. May 25.

Darlington, John, Shipley Hall near Bradford, in and for the West Riding of the county of York. May 25.

MASTERS EXTRAORDINARY IN CHANCERY.

From May 22nd, to June 22nd, 1849, both inclusive, with dates when gazetted.

Corles, William, Worcester. May 25.

Etherington, Charles, Brompton. May 22.
Sheppard, Francis John, Wells, county Somerset. June 19.
Spackman, George, Bradford, county Wilts. June 22.
Watkins, James, Bolton-le-Moors. June 1.

DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From May 22nd, to June 22nd, 1849, both inclusive, with dates when gazetted.

Darbishire, Samuel Dukinfield, and Richard Simpson, jun., Manchester, Attorneys and Solicitors. May 25.

Durrant, George John, and Henry Last, Chelmsford, Attorneys and Solicitors. June 8.

Maltby, Henry, Richard Beachcroft, and William Tooke Robinson, 34, Old Broad Street, Attorneys and Solicitors, so far as regards the said Richard Beachcroft. June 15.

Pullen, William, and George Finch, Worcester, Attorneys-at-Law. June 15.

Salter, George, and John Jones, Ellesmere, Attorneys and Solicitors. June 1.

RECENT DECISIONS IN THE SUPERIOR COURTS.

AND SHORT NOTES OF CASES.

Rolls' Court.

Cohen v. Wilkinson. June 7, 8, 1849.

RAILWAY COMPANY FORMING PART ONLY OF LINE.—SHAREHOLDER.

A railway company was empowered by its act to make a railway from E. to P. The directors, however, only constructed it from E. to L., a distance of four miles. Upon a demurrer for want of equity to a bill to declare that such proceeding was out of the powers granted by the act, and for an injunction to restrain the forming the railway only to L.: Held, that the company had contracted for the making of the whole railway, and that, as they had not fulfilled their contract, this Court would interfere, and the demurrer was overruled.

THIS bill was filed by Abraham Cohen, a shareholder in the Direct London and Portsmouth Railway Company, which was incorporated in 1846, and empowered to make a line from Epsom to Portsmouth, on behalf of himself and all others the proprietors of shares in the company, except the directors, who were the defendants. The bill prayed a declaration that it was not within the powers granted to the company to make a railway from Epsom to Leatherhead only and that the funds of the company could not be applied for that purpose. It also alleged that the directors had

abandoned all intention of making the railway from Epsom to Portsmouth, and intended to make a railway to Leatherhead only, and it therefore sought to restrain the defendants from making such railway only, and from applying the funds to that purpose. The defendants having demurred for want of equity.

Melins and Bovill for the demurrer; *Turner and Cole* for the plaintiffs.

The *Master of the Rolls* said, that the demurrer admitted the statements in the bill, and it was clear that the compulsory powers given to the company by their act were only given in consideration of the public good to arise from the completion of the whole of the works. Two classes of persons might be affected by the act,—the owners of land and shareholders in the company. But where an act of parliament imposed burdens on individuals for the purpose of obtaining some public good, and the Court saw it could not be attained or completed, it would protect the parties until it could be completed. The Court interfered, not on surmises or conjectures, or on circumstances existing at the passing of the act, but on those arising subsequently, from which it was manifest that the end contemplated could not be obtained. Shareholders were not in a different position, for they advanced and subscribed their money on the faith of the fulfilment of the undertaking as sanctioned by the legislature, and nothing less.

The company must be considered to have contracted to make the works according to the scheme proposed to parliament, and the shareholders were, therefore, entitled to have that contract realized, if possible. Railway companies were not like ordinary partnerships, but were partnerships for a public purpose, and for which only the powers were given by parliament and the capital advanced by the shareholders. There was no authority to make a less part than the whole of this line, and, therefore, if the capital were applied to make such less line, it was an illegal application. The shareholders are not bound by this application of their capital, and the demurrer must be overruled.

June 20.—*Parsons v. Groom*—Stand over to 3rd seal.

— 20.—*Bainbrigge v. Baddeley*—*Cur. ad. vult.*

— 23.—*In re Remnant*—Petition dismissed without costs.

— 23.—*Tagg v. South Devon Railway Company*—Time to answer allowed, with costs.

— 23.—*In re Cooper's Charity*—Reference to the Master to inquire into charity estate.

— 23.—*Esparte Bishop and Archdeacon of Isle of Man*—Order for payment to petitioners of surplus income of charity estate.

Vice-Chancellor of England.

In re Lancaster and Carlisle Railway Acts.
April 27, 1849.

COMPENSATION.—AWARD.—COSTS.

An award was made by an arbitrator, under a reference to assess compensation for lands taken, for a greater sum than that offered by the railway company, but no direction was given as to costs. The parties, therefore, agreed to refer it to the Taxing Master of the Court of Queen's Bench. A petition for the taxation of further costs incurred in consequence of the taking of the land by the company was refused, on the ground that the parties had by their conduct adopted the award, which it must be assumed included those expenses.

THE Lancaster and Carlisle Railway Company had entered upon and occupied certain lands situate at Penrith, in Lancashire, and used the same for the purpose of obtaining therefrom materials for the construction of their railway. The petitioners, who were entitled to the land under the will of the late John Hamilton, signified their desire that the compensation should be settled by arbitration, and the arbitrators awarded the sum of 1,472l. 10s., the company having only offered 1,000l. The arbitrators had not settled the amount of the costs of the arbitration or incident thereto, and it was, therefore, arranged that the amount thereof should be referred to the Taxing Master of the Court of Queen's Bench. The Taxing Master, under the impression (as the petitioners alleged) that he was to tax the costs

as between party and party, allowed no costs for witnesses who had attended the arbitration, nor in respect of the costs and expenses incurred in consequence of the watch and account which it was necessary for the petitioners to keep of the value of the stone and materials taken by the company, and other matters connected therewith.

This petition was therefore presented, and prayed that the sum awarded and subsequently paid into the bank by the company might be invested, and that it might be referred to the Master to tax the costs of taking the land and keeping an account of the stone and materials taken by the company, and of expenses otherwise connected therewith.

Elderton, in support of the petition, referred to the 6 Vict. c. 18, which, by s. 51, provides, that "on every such inquiry before a jury, where the verdict of the jury shall be given for a greater sum than the sum offered by the promoters of the undertaking, all the costs of such inquiry shall be borne by the promoters of the undertaking;" and by the 52nd section, that "the costs of any such inquiry shall, in case of difference, be settled by one of the Masters of the Court of Queen's Bench of England or Ireland, according as the lands are situate, on the application of either party, and such costs shall include all reasonable costs, charges, and expenses incurred in the summoning, impanneling, and returning the jury, taking the inquiry, the attendance of witnesses, the employment of counsel and attorneys, recording the verdict and judgment thereon, and otherwise incident to such inquiry."

Follett, contra, contended that the matter having been referred to arbitration by agreement between the parties and sent to the Taxing Master, the Court had no jurisdiction to interfere.

The Vice-Chancellor said, that the matter referred to arbitration included all the injury which the parties had suffered. It was subsequently agreed that the costs should be taxed, and the petitioners, having by their conduct adopted the award, could not now come for extended costs. It must be assumed that the award included the expenses referred to in the petition, and it would, therefore, be ordered that the money invested should be paid out to the petitioners, and the costs of this application and incidental thereto be paid by the company.

June 20.—*In re 4 & 5 Vict. c. 35, Esparte Taffnell*—Notice of petition to invest money under Copyhold Enfranchisement Act to be served on Commissioners.

— 20.—*Tomlinson v. Troughton*—Application to stay proceedings pending appeal, refused.

— 22.—*Esparte Windsor, Staines, and South-Western Railway Company*—Order for payment out of Court of money paid under 8 Vict. c. 18, s. 86, without service on landowners, on affidavit that the costs had been paid.

June 22.—*Shadbolt v. Thornton*—Judgment on construction of will.

— 22.—*Esparte Baxter, In re London and North-Western Railway Act.*—Order for payment of costs by company as prayed—Investment to be made without reference by consent.

— 23, 25.—*Morritt v. Walton*—Petition to confirm Master's report as to proceedings in suit, and whether they should be suspended, refused.—Cross-petition that suit might proceed, allowed.

— 26.—*Makeating v. Smith*—Decree for specific performance of contract of sale, with costs.

Vice-Chancellor Knight Bruce.

Fowler v. Reynal. May 7, 1849.

MARRIAGE SETTLEMENT.—BREACH OF TRUST.

The trustees under a marriage settlement were, by a memorandum upon the settlement of an even date, requested by the settlor, cestui que trust and intended husband, to lend the trust money to the owners or lessees of certain property, either as 1st, 2nd, or 3rd mortgagees. The money was lent to the settlor and two other parties who were the owners. The settlor having retired from the ownership, the trustees continued the money in the two other parties' hands, taking a third mortgage with a covenant to pay. Upon the securities turning out insufficient, held, that the trustees were only empowered to lend to the owners, (the settlor being one); and, therefore, as they had lent it to the other two, they had committed a breach of trust, and were liable to refund the trust money: Held, also, that the covenant in the last mortgage released the settlor from all liability on his simple contract.

MR. BISH, by a deed made in 1825, assigned a sum of 8,450*l.* stock to four trustees, upon trust for his daughter, Frances Elizabeth Fowler, for her separate use during her life, with power to vary the securities with the consent of the tenant for life, and trusts over for the issue of the marriage. There was also on the settlement a memorandum of the same date, requesting the trustees on behalf of the settlor, his daughter, and her intended husband, to lend the money to the owners or lessees of Vauxhall Gardens, either as first, second, or third mortgagees. The settlor, Mr. Gye, and Mr. Hughes were the proprietors of the gardens. The money was accordingly lent, but no security was taken at the time. The settlor having retired from the proprietorship in the gardens, the trustees continued the money in the hands of the remaining two proprietors, taking from them a third mortgage upon the property, with a covenant by them to pay the money. The security proved insufficient; whereupon this bill was filed against the trustees to compel a re-transfer of the stock.

Bacon, Malins, and Hamilton Humphreys

for the plaintiffs; *Wigram, Freeling, Osborne, Drewry, and Goldsmid* for the other parties.

The Vice-Chancellor said, that the loan of the trust money upon a third mortgage on copyhold property, and that of such a nature as Vauxhall Gardens, was improper, and the question was, whether the trustees would have to refund the money. The covenant in the mortgage, whether joint or several, discharged the settlor from all liability on his simple contract. Now, the memorandum upon the settlement only authorized the loan to the lessees or owners, of whom the settlor was one; but the money had been lent to two only, which was a substantial breach of trust, and the trustees must therefore pay the trust money into Court on or before August 3, without prejudice to any question between themselves, and with leave to offer security for the money.

June 20.—*In re North of England Joint-Stock Banking Company, Esparte Burlinson*—Motion refused with costs to reverse Master's decision as to list of contributories.

— 20.—*Esparte Morgan, In re Vale of Neath Brewery*—Motion to reverse Master's decision as to list of contributories, refused.

— 21.—*Duncan v. Saunders*—Interim order for injunction continued—Action to be brought immediately.

— 21.—*In re Liverpool and Manchester Saw Mills and Timber Joint-Stock Company*—Motion for leave to go before the Master as to being included on list of contributories after time expired, allowed with costs.

— 22.—*In re London and South Essex Railway Company*—Petition to wind-up company, refused without costs.

— 22.—*In re London and Westminster Mutual Life Assurance Company*—Order for winding-up.

— 22.—*In re Brighton Junction Railway Company*—Order for winding-up.

— 22.—*Jones v. Giles*—Writ of *ne exeat regno* discharged on payment of money into Court.

— 23.—*Short v. Mercier*—Exceptions to Master's report finding farther answer insufficient, allowed.

— 25.—*Esparte Sturgis, In re Kernot*—Part heard.

— 25.—*Esparte Bainbridge, In re Stainton*—Petition to annul fiat refused.

— 26.—*Krechner v. Ditchburn*—Interim injunction restraining injuring vessel.

Vice-Chancellor Wigram.

Douglas v. Willes. Feb. 20, 21, May 22, 1849.

MARRIAGE SETTLEMENT.—CHILDREN'S SHARE.

Held, that the children of the marriage were each entitled to their share in the fund under a settlement, over which the parents had a power of appointment; for, although advances had been made to some, they had not been made under the settlement.

CHARLES JOHNSON had, during his life—

time, given certain sums of money and leasehold property to his several children for their advancement, and also made further bequests by his will. The nine children of himself and Mary his wife were entitled, under a settlement made in 1790, to the sum of 10,000*l.*, as they might appoint. The question, therefore, arose, whether any of such payments ought to be taken in satisfaction of any of the children's interests in the settled fund. And if so, whether the father or the children who had not received such advances were entitled to the fund thus undisposed of.

The *Solicitor-General*, C. P. Cooper, K. Parker, Walker, Wood, Teed, Sir F. Simpkinson, R. Palmer, and other counsel for the several parties.

The *Vice-Chancellor*, after taking time to consider, held, that the children were each entitled to the one-ninth share in the fund settled, notwithstanding the several gifts or appointments made by their father from his own estate, but which were not made in exercise of the power of appointment given by the settlement.

June 30.—*Newman v. Hutton*—Motion to stay trial of issue, refused with costs.

— 20.—*Moss v. Raine*—Motion to stay creditor's suit, refused with costs.

— 21.—*Attorney-General v. Great Western Railway Company*—Stand over.

— 23.—*Crucefts v. Rowe*—Master's report confirmed, declaring trusts, and appointing trustees of charity.

— 22, 25.—*Earl of Coventry v. Lord Lauderdale*—*Cur. ad. vult.*

— 23, 25.—*East Lancashire Railway Company v. Hattersley*—Part heard.

Queen's Bench.

(Before the Four Judges.)

Regina v. Hutton. May 5, 1849.

SPECIAL CONSTABLES.—LIABILITY OF COUNTY RATE.

Held, that the county rate was liable for the expenses of calling out special constables for the preservation of the peace in a borough, under the 1 & 2 W. 4, c. 41, s. 13, although the borough had a separate Quarter Sessions.

In 1842, it was necessary to swear in special constables in Manchester, for the suppression of riots and preservation of the peace within the borough, and the expenses thereby incurred amounted to 2,300*l.* The borough magistrates made an order for the payment of this sum by the treasurer of the county, but the county magistrates objected to the payment out of the county rates. A *mandamus* had been granted to compel them to allow the sum charged, to which a return was made that the borough had a separate Quarter Sessions, and was in other respects independent of the county. A demurrer to the return was thereupon taken. The statutes 1 & 2 W. 4, c. 41;

1 Vict. c. 81; and 5 & 6 W. 4, c. 76, were cited.

The *Court* said, that by the 13th section of the 1 & 2 W. 4, c. 41, it was enacted, that "the justices of the peace acting for the division or county within which any such special constables shall have been called out to serve, at a special session to be held for that purpose, or the major part of the justices at such special session, are hereby empowered to order from time to time such reasonable allowances, &c.; and the said justices so ordering, if justices for any county, riding, or division having a separate commission of the peace, or if justices for any liberty, franchise, city, or town which shall be contributory to the public rate for any county, riding, or division shall make every order for the payment of such allowances and expenses upon the treasurer of such county, riding, or division, who is hereby required to pay the same out of any public money which shall then be in his hands, and the said treasurer shall be allowed all such payments in his accounts." As, therefore, the borough contributed to the county rate, the county fund is liable to the payment of these charges, and the demurrer to the return, setting forth that the borough had a separate Quarter Sessions, must be allowed, and judgment be given for the Crown. Rule accordingly.

June 20.—*Rochdale Canal Company v. King*—Rule to enter nonsuit discharged.

— 21.—*Regina v. Grant*—Rule to quash order of justices on award discharged.

— 21.—*Bisgood v. Harrison*—Rule for new trial discharged.

— 21.—*Fuller v. Brown and another*—Rule for new trial discharged.

— 22.—*Doe dem Mence v. Hudley*—*Cur. ad. vult.*

Queen's Bench Practice Court.

(Coram Wightman, J.)

Worsley and another v. South Devon Railway Company. June 9, 1849.

INQUISITION FOR LANDS TAKEN BY RAILWAY COMPANY.—UNDER-SHERIFF.—SOLICITOR.

Lands had been taken by a company for the purposes of their railway, and a jury had been summoned by the under-sheriff, who was the solicitor to a shareholder in the company. Another solicitor was appointed as under-sheriff to conduct the inquiry. A verdict having been given for a less amount than that tendered by the company and than the damages proved, a rule nisi was granted to quash the injunction.

THIS was an application for a rule calling on the South Devon Railway Company to show cause why an inquisition should not be quashed. It appeared from the affidavits in support of the motion, that on the 13th December, 1848, an inquisition had been held at Plymouth for the purpose of assessing the amount of com-

pensation due to the plaintiffs, for property which had been taken from them for the railway company. The inquisition took place before Mr. Dennis Moore, who acted on that occasion as under-sheriff for the county of Devon. The under-sheriff was Mr. Mark Kennaway, who being the solicitor for the company, and also a shareholder, was disqualified from conducting the inquiry. He had, nevertheless, taken part in nominating the jury. Mr. Dennis Moore was appointed on the 12th as under-sheriff, and the jury returned a verdict for 1,670*l.*, although the company had tendered 1,800*l.*, and the plaintiffs had proved that they were injured to the amount of 2,800*l.*

Stevens, in support of the motion, contended, that the appointment was merely a colourable one, as it was impossible that Mr. Moore could have summoned the jury to assess the damages on the 13th, when he had only been appointed on the 12th, and that there had been an improper interference by Mr. Kennaway. It was also submitted, that the appointment of Mr. Moore as under-sheriff was illegal.

The Court granted a rule nisi.

Common Pleas.

Beswick v. Capper. June 12, 1849.

COUNTY COURTS.—JURISDICTION.—SET-OFF.

Held, that the County Court has no jurisdiction in a case where the original demand is above 20*l.* but is reduced below 20*l.* by the plaintiff giving credit as a set-off for money paid also above 20*l.*, and abandoning the excess of the balance so as to bring it within the 9 & 10 Vict. c. 95; and where it appeared there was no balance of account come to by the parties.

A RULE nisi for a prohibition had been obtained to restrain the judge of the County Court of Staffordshire from further proceeding in this case, on the ground that the Court had no jurisdiction. The plaintiff had been brought in the County Court for a sum alleged to be due on the balance of an account from the defendant. It appeared that the original claim of the plaintiff was for 227*l.* 2*s.* 8*d.*, but in his particulars of demand he allowed the defendant credit for a set-off by bill delivered of 116*l.* 16*s.* 9*d.*, and for a payment of 70*l.*, amounting in the whole to 186*l.* 16*s.* 9*d.*, and abandoning the excess, brought his action in the County Court and recovered judgment for 19*l.* 19*s.*

Greaves against the rule; *T. Jones* in support of the rule.

The Court said, that this was not a case within the jurisdiction of the 9 & 10 Vict. c. 95. It was never intended that the County Court should have jurisdiction to inquire into claims of an unlimited amount, in a case where it was sought to show that the balance due was under 20*l.*, as to obtain a verdict an inquiry must be gone into much beyond that amount. It was very different to the case

where the parties met and balanced their accounts and a plaint was entered for such ascertained balance, since here the defendant had not assented to the appropriation by way of set-off of his claim. The decision of *Woodham v. Newman*, 38 L. O. 68, was precisely similar, and the rule for a prohibition must, therefore, be made absolute.

June 20.—*Thorogood, administratrix, v. Bryant*—Rule for new trial discharged.

— 20.—*Catlin v. Hills and others*—Cur. ad. vult.

— 21.—*Worthington v. Warrington*—Rule absolute to reduce damages.

— 21.—*Wilby v. Elston*—Rule absolute to enter nonsuit.

— 23.—*Heyhoe v. Burge*—Cur. ad. vult.

— 25.—*Kenning v. Buchanan*—Rule absolute for new trial.

— 25.—*Beard v. Egerton and others*—Rule absolute to enter verdict for plaintiff.

— 25.—*Nickels v. Ross, jun.* Rule absolute to enter verdict for plaintiff on 1st and 3rd issues—Cross rule discharged to enter verdict for defendant on 5th, 8th, and 9th issues.

— 25.—*Garratt v. Tuck*—Rule to enter verdict for plaintiff on 2nd issue, discharged.

— 25.—*Duke of Brunswick v. Sloman and others*—Rule for new trial discharged.

— 25.—*Hopwood v. Thorn*—Rule absolute to enter nonsuit.

— 25.—*Wright v. Colls*—Rule absolute to enter verdict for defendant on 4th issue.

— 25.—*Walker v. Giles and another*—Verdict for plaintiff in action of replevin.

Eschequer.

June 20.—*Brettell and others v. Williams and others*—Cur. ad. vult.

— 20.—*Stokes v. Shotton*—Verdict to be entered for plaintiff for 10*l.* and costs, exclusive of those of the trial and this application, otherwise rule absolute for new trial.

— 21.—*Ripley v. McClure*—Cur. ad. vult.

— 22.—*Hingston v. Sir Fitzroy Kelly*—Rule absolute for new trial.

— 23.—*Doe dem. Back and others v. Moye*—Rule absolute for new trial on the ground of misdirection.

— 23.—*Attorney-General v. Teyford*—Judgment on construction of will—Verdict for the Crown for legacy duty.

— 25.—*Johnson v. Midland Railway Company*—Rule absolute to enter nonsuit.

Court of Criminal Appeals.

June 23.—*Regina v. Illidge*—Conviction affirmed.

— 23.—*Regina v. Pascoe*—Conviction affirmed.

— 23.—*Regina v. Radley*—Conviction affirmed.

— 23.—*Regina v. Langridge*—Conviction affirmed.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

House of Lords Appeals.

BILL OF REVIEW.

To sustain a bill of review proceeding on facts discovered subsequent to the decree complained of, it must be shown that leave of the Court to file it was regularly obtained.

To sustain a bill of review for error apparent on the decree complained of, it is not enough that it contains allegations that the decree is erroneous, but error must be shown on the face of it. *Tomney v. White*, 1 House of Lords' Ca. 160.

Case cited in the judgment: *Haig v. Homan*, 8 C. & F. 321.

BOND.

Surety.—**Concealment.**—A bond, void in law, may be enforced as an agreement in equity, subject to the effect of the equitable circumstances under which it was made. An instrument, purporting to be a bond, executed by the obligor, with blanks for the name of the obligee, and therefore void in law, is inoperative in equity as an agreement, there being no second contracting party.

A party joining as surety in a bond ought to be informed of the nature of the obligation, name of the obligee, and the relation in which he stands to the principal obligor.

M. induced *W.* to join him as surety in a bond for repayment of a loan, saying he only wanted time to realize securities, and he would hold her harmless. *M.* and *S.*, being trustees of a fund, sold it, with consent of *B.*, the cestui que trust, and thereby raised the loan for *M.*, who informed *W.* that *B.* was the lender, but did not inform her how the loan was raised:

Held, that, *B.* not being in fact the lender, his personal representatives had no priority of contract with, nor equities against *W.*, and that, in consequence of the concealment from her of the real nature of the transaction, she was, in equity, altogether released from the bond. *Squire v. Whitton*, 1 House of Lords' Ca., 333.

CODICIL.

Uncertainty.—A testator gave to his executors beneficially, in equal proportions, all his property which he might not dispose of, subject to his debts and any bequests which he might afterwards make. He afterwards made a codicil in these words:—"In a codicil to my will I gave to the corporation of Gloucester 140,000*l.*. In this I wish my executors would give 60,000*l.* more to them, for the same purpose as I have before named. I would also give my friends"—(several were named, with large legacies,)—"and I confirm all other

bequests, and give the rest of my property to the executors for their own interest." No other codicil was produced.

Held, (affirming a decree of the Court of Chancery on a bill filed by the corporation of Gloucester, claiming the two legacies,) that the purpose of both the legacies must be held to be the same, and that both failed for uncertainty of the purpose. *The Corporation of Gloucester v. Osborn*, 1 House of Lords' Ca., 272.

CONCEALMENT.

See *Bond*.

CONTRACT.

Post letter.—**Damages.**—A letter offering a contract does not bind a party to whom it is addressed to return an answer by the very next post after its delivery, or lose the benefit of the contract; an answer, posted on the day of receiving the offer, is sufficient.

A contract is accepted by the posting of a letter declaring its acceptance.

A person putting into the post a letter, declaring his acceptance of a contract offered, has done all that is necessary for him to do, and is not answerable for casualties occurring at the post-office.

In an action for damages for breach of contract in the sale of goods, the measure of damages is not merely the amount between the contract price, and the price at which such goods could be bought at the moment when the contract was broken; but likewise a compensation for such profit as might have been made by the purchaser had the contract been duly performed. *Dunlop v. Higgins*, 1 House of Lords' Ca. 381.

Cases cited in the judgment: *Stocken v. Collen*, 7 M. & W. 515; *Adams v. Lindsell*, 1 B. & Ald. 681; *Watt v. Mitchell*, Cas. in Court of Sess. (1839), 1157, 1163.

See *Vendor and Purchaser*.

DIVORCE.

1. Action for damages.—**Lapse of time.**—The wife's general bad conduct admitted as an excuse for the husband's omitting to bring an action against the adulterer.

A lapse of eight years from the discovery of the wife's adultery till the petition for a divorce was presented, sufficiently accounted for by the husband's inability to bear the expenses of a divorce bill. *Brook's Divorce Bill*, in re, 2 House of Lords' Ca. 159.

2. Attendance of petitioner.—**Ill health.**—The enforcement of the standing order of the House, requiring the petitioner in a divorce bill to present himself for examination at the bar, may be dispensed with on account of the state

of his health. *Heneage's Divorce Bill*, in re, 1 House of Lords' Ca. 496.

3. *Damages by consent*.—The acceptance, by the petitioner in a divorce bill, of an offer of a certain sum upon a writ of inquiry to assess the damages, after judgment by default, in an action of *crim. con.* against the wife's paramour: *Held*, under the circumstances, not to be a bar to the bill. *Heneage's Divorce Bill*, in re, 1 House of Lords' Ca. 496.

EVIDENCE.

See *Illegitimacy; Heir-at-Law; Patent of Peerage; Presumption*.

HEIR-AT-LAW.

Evidence.—Issue.—Will.—It is the ordinary rule of a Court of Equity, in cases where an heir disputes the will, to grant an issue to try that question; but where he does not dispute it, but acts under it, merely denying that certain portions of the land pass under the description used in it, a Court of Equity has full jurisdiction to determine the question thus raised, without granting an issue, or may grant such issue at its discretion.

In such a case parol evidence of what was considered, in the lifetime of the testator, to be the extent of the lands constituting the estate, is receivable.

A testator, who describes himself as of "Ashford Hall, in the county of Salop," devised "all my estate in Shropshire, called Ashford Hall," to trustees, for sale:

Held, that this description was not confined to the mansion house so called, and the lands immediately adjoining, but extended to such other lands in Shropshire as he possessed at the time of making his will.

Held, also, that the Court of Equity, in a suit to enforce the trusts of the will, might receive parol evidence to show what the testator had been accustomed to consider the Ashford Hall estate. *Ricketts v. Turquand*, 1 House of Lords' Ca. 472.

HUSBAND AND WIFE.

Articles of separation.—Jurisdiction.—The Court of Chancery exercises only its ordinary jurisdiction in giving effect to articles of separation between husband and wife, so far as they regard the arrangement of property agreed upon.

The Court, in decreeing specific performance of such articles, does not inquire into the cause of separation.

The stopping of a suit in the Ecclesiastical Court for nullity of marriage, on the ground of impotency of the husband, is a sufficient consideration to him for articles of separation; and so, it seems, is a covenant by a third party to pay his debts.

Seem, that the Court, after decreeing specific performance of the articles, may restrain the wife as well as the husband, from proceeding in the suit for nullity. *Wilson v. Wilson*, 1 House of Lords' Ca. 538.

Cases cited in the judgment: *Wilson v. Mather*,

3 B. & Ad. 743; *Frampton v. Frampton*, 4 Beav. 287; *Clough v. Lambert*, 10 Sim. 174; *Wellesley v. Wellesley*, 10 Sim. 256; *Batem v. Countess of Ross*, 1 Dow, 135.

ILLEGITIMACY.

Non-access.—Evidence.—The illegitimacy of a child, born of a married woman, is established beyond all dispute by evidence of her living in adultery at the time when the child was begotten, and of her husband then residing in another part of the kingdom, so as to make access impossible. *In re the Barony of Saye and Sele*, 1 House of Lords' Ca. 507.

See *Presumption*.

INFORMATION.

Jurisdiction.—Pleading.—The Attorney-General, (after the passing of the statute 5 Vict. c. 5,) filed an information in Chancery against the mayor and commonalty of London, alleging that the Crown was spoiled of the bed and soil of the river Thames; that the defendants were conservators thereof, and in breach of their duty as such conservators, had granted to divers persons (also made defendants) licences to embank parts of the river, and had received fines for such licences, and that such embankments were nuisances; and the information prayed that the rights of the parties might be ascertained, that the licences might be declared void, and that injunctions might issue to prevent the completion of the embankments. The defendants denied that the embankments were nuisances, and demurred to the rest of the bill for want of equity.

Held, affirming an order of the Master of the Rolls, that, upon these pleadings, the information was maintainable.

If a bill or information discloses, upon the facts stated in any part of it, ground for a decree in equity, it is maintainable, (*per the Lord Chancellor*).

A bill, which raises a legal question, may be so framed as not to be open to demurrer on that account, but, on the real nature of the question appearing at the hearing, the Court of Equity will refuse to interfere, (*per the Lord Chancellor*).

As the Crown would not be liable to costs in this case, the judgment of the Court below was affirmed, without costs.

Quere, whether, when an act of parliament transfers jurisdiction from one Court to another, or grants an extension of the jurisdiction of an existing Court, it is necessary, in order to make the act binding on the Crown, that the Crown should be named therein? *Cooperation of London v. Attorney-General*, 1 House of Lords' Ca., 440.

INSURANCE.

1. *Total loss.*—A vessel is totally lost, within the meaning of a policy, when it becomes, as a ship, of no use or value to the owner, and is as much lost as if it had gone to the bottom of the sea, or had been broken to pieces, and the

whole or great part of the fragments had reached the shore as wreck.

A loss is also to be considered as total where a prudent owner, if uninsured, would not have repaired.

In a valued policy the agreed total value is conclusive.

A policy of insurance is not a perfect contract of indemnity. It must be taken with this qualification, that the parties may agree beforehand in estimating the value of the subject assured by way of liquidated damages.

A ship was insured in a policy, in which the value was stated at 17,500*l*. The ship was injured by storms, was surveyed, and the repairs were estimated at 10,500*l*. When repaired, the vessel would have been of the marketable value of 9,000*l*. The assured abandoned and claimed as for a total loss. The jury found, that, under the circumstances existing in the case, a prudent owner, uninsured, would not have repaired the vessel.

Held, by the Lords, affirming the judgment of the Court below, that the assured could recover as for a total loss. *Irving v. Manning*, 1 House of Lords' Ca., 287.

Cases cited in the judgment: *Lewis v. Rucker*, 2 Burr. 1167; *Allen v. Sugrue*, 8 B. and Cr. 561; *Young v. Turing*, 2 M. & Gr. 593.

2. *Abandonment.—Constructive and actual total loss.*—A vessel insured under a time policy from August, 1841, to August, 1842, encountered very severe weather in the Indian Seas, and was compelled in May, 1842, to put into the Mauritius. The master wrote to the owners, telling them of the injuries the vessel had received, of the necessity to make extensive repairs, of his intention to borrow money on bottomry for that purpose, of the sum required, and of the impossibility of getting the money, except on the undertaking to return direct to England, instead of proceeding to Bombay, as originally intended. He further stated, that on account of the very low state of freights in India, this would be better for their interests, which he said he consulted in everything he did. The agents for Lloyd's at the Mauritius, who were employed by the captain to act for him, wrote letters to the same effect. These letters were received at intervals between September and December, 1842, and in the latter month the owners wrote to the agents expressing their surprise at the amount required, but saying, at the same time, that they supposed what was done was the best that could be done under the unfortunate circumstances in which the ship was placed. The owners wrote to agents in London, apprizing them of the expected arrival of the vessel, and directing them to do what was needful. The vessel did arrive on the 27th of March, and was at first taken possession of by the agents for the owners. On the 30th of March, the owners abandoned to the underwriters.

Held, that, under the circumstances, they were not entitled to recover as for a total loss; for, 1st, assuming notice of abandonment to be

necessary in a case of constructive total loss, the notice here had not been given in time; and 2ndly, the conduct of the owners on the receipt of the letters amounted to an election to treat this as a partial loss, and they could not afterwards, on the arrival of the vessel, when they found that the cost of repairs much exceeded the market value of the vessel itself, convert this partial into a total loss.

Though the master may, by an ordinary rule of law, be considered, whenever the vessel is, by capture or other detentions and casualties, prevented from continuing the voyage, as the agent for all parties concerned, yet the owners, even under such circumstances, may by their conduct make him their sole agent, so as to be bound by his acts.

Notice of abandonment is necessary in order to convert a constructive into an absolute total loss, (*per* Lord Campbell).

The cases of *Cambridge v. Anderton*, 2 Barn. & C. 691, and *Roux v. Salvador*, 1 Bing. N. C. 526, show that where a ship, in consequence of the inability of the master to get it off the rocks where it has struck, has been actually sold, or where a cargo of a perishable nature has been so damaged by the sea that its substance is gone, and it can never reach the destined port in specie, the loss, in each instance, is actual, and not constructive total loss. Where a prudent owner uninsured would have sold, the case amounts to one of actual loss. *Fleming v. Smith*, 1 House of Lords' Ca. 514.

JURISDICTION.

See Husband and Wife; Information.

LEASES.

Power of leasing.—Husband and wife, by a post-nuptial settlement, conveyed part of the wife's estates to a trustee to the use of the husband for life, remainder to their eldest son for life, &c., with an ultimate remainder in fee to the husband, and a power to him to lease "for any time or term of years or lives, and with or without covenants for renewal; and in case of the determination of all or any of the aforesaid lease or other leases, to make new or other leases thereof in manner aforesaid, and with or without any fine or fines as he should think fit." The husband was also empowered to raise, by sale or mortgage, any sum or sums of money not exceeding in the whole 20,000*l*., or to charge the premises therewith, for such uses as he should appoint, and to charge any amount for younger children. The husband and wife afterwards executed eight leases of parts of the estates comprised in the settlement for terms of 999 years, upon which fines were taken. One of the leases contained a clause permitting the lessee to graff and burn the surface, and also a clause of surrender; and another contained clauses making the lessee dispenishable for waste, and permitting him to cut timber, and to graff and burn the surface, and in this lease was included part of the wife's estate not comprised in the settlement

The latter lease, and another of prior date, were made subject to existing freehold leases. None of the leases were referred in the power. The fines received on the making of these and other leases amounted to 10,208*l.* and the husband subsequently raised 10,500*l.* by mortgage of the estates, subject to the leases: *Held*, that all the leases were valid at law, as being authorized by the power in the settlement, and consequently there was no ground of equity to impeach them.

Regard is to be had to the objects of the settlement, where the power is of doubtful construction; but no such consideration is to control powers expressed in clear terms, according to their ordinary acceptation. *Sheehy v. Lord Muskerry*, 1 House of Lords' Ca., 576.

Cases cited in the judgment: *Talbot v. Tipper*, Skinner, 427; *Long v. Long*, 5 Ves. 445; *Attorney-General v. Moses*, 2 Madd. 294; *Attorney-General v. Wray*, Jacob, 307; *Tomlinson v. Dighton*, 10 Mod. 35; *Doe v. Hiern*, 5 M. & S. 40.

LIBEL.

1. *Injunction. — Interdict.* — The register of protests for non-acceptance and non-payment of bills of exchange and promissory notes, established by the Scotch Acts of 1681 and 1696, and the 12 Geo. 3, c. 72, and 28 Geo. 3, c. 18, is a public document, to which everybody has a right of access, and the publication of which in a printed paper, does not constitute a libellous publication.

A person, whose name was upon this register, applied to the Court of Sessions for an *interim* interdict to prevent, so far as his own name was concerned, the publication of a copy of the register. The Court decreed for the application:

Held, by the Lords, reversing that decree, that the interdict ought not to have been granted, and also that the costs in the Court below should be given.

An interdict, though in form *ad interim* only, must be treated as a final judgment, and may be the subject of appeal to this House. *Fleming v. Newton*, 1 House of Lords' Ca. 363.

2. *Pleading.* — Though defamatory matter may appear only to apply to a class of individuals, yet if the descriptions in such matter, is capable of being, by *innuendo*, shown to be directly applicable to any one individual of the class, an action may be maintained by such individual in respect of the publication of such matter.

In such a case the *innuendo* does not extend the sense of the defamatory matter, but merely points out the particular individual to whom matter, in itself defamatory, does in fact apply.

Therefore, after verdict, a declaration which recited that the plaintiff was owner of a factory in Ireland, and charged, that the defendant published of him and of the said factory a libel, imputing, that "in some of the Irish factories (meaning thereby the plaintiffs' factory) cruelties were practised," though there was no allegation otherwise connecting the libel with the plaintiff, was held good.

A. and B. may join in an action for a libel containing imputations injurious to a trade carried on by them jointly as partners. *Le Fanu v. Malcolmson*, 1 House of Lords' Ca. 637.

PATENT.

1. *Direction to jury.* — A patent was taken out for "a new and improved mode of manufacturing silk, cotton, linen and woollen fabrics." The specification and a disclaimer subsequently filed under the stat. 5 & 6 Wm. 4, c. 83, set forth, that the patentees claimed "the mode herein-before described, of producing or preparing stripes of silk, cotton, woollen, or linen, or of a mixture of two or more of these materials, in such a manner that the weft or lateral fibres of both cut edges of each stripe are all brought up on one side, and into close contact with each other, and the re-weaving of such stripes with the whole fur or pile uppermost into the surfaces of carpets," &c. It appeared that one of these processes was old. The judge directed the jury, that if one of them was new, the patent could be supported for the combination of them, and would only be invalid if there had been a public use of both before the date of the patent:

Held, that this direction was erroneous, and that the patent was void. *Templeton v. Macfarlane*, 1 House of Lords' Ca. 595.

2. 5 & 6 W. 4, c. 83. — The assignees of letters patent may, under the 1st and 4th sections of the 5 & 6 Wm. 4, c. 83, lawfully obtained a renewal of such patents. The statute does not authorize the Judicial Committee of the Privy Council to impose terms as conditions on which patents are to be renewed. The authority of the Committee is limited to reporting on matters as between the public and the party applying.

There is nothing in the statute to fetter the discretion of the Crown in the renewal, except the length of time for which that renewal is to be granted, and which must not exceed seven years.

An application for a renewal is "prosecuted with effect" within the terms of the statute, if the party applying obtains the report of the Judicial Committee of the Privy Council before the expiration of the original patent.

The Crown is not restricted as to the time within which it may act upon such report, and renewed letters patent are not void, because they are dated after the expiration of the original letters patent. *Ledsam v. Russell*, 1 House of Lords' Ca. 687.

3. *Pleading.* — If the Judicial Committee should impose a condition on a party applying for the renewal of a patent, such party need not, in an action for the infringement of the patent, aver that such condition was complied with before the patent was renewed. *Ledsam v. Russell*, 1 House of Lords' Ca. 687.

PATENT OF PEERAGE.

* *Evidence.* — When a patent of peerage cannot be found, entries on the journals of the House of Lords, showing the limitations of the

patent, may be referred to for that purpose; or an examined copy of the record of the patent will be received. *In re the Barony of Saye and Sele*, 1 House of Lords' Ca. 507.

PRESUMPTION.

Legitimacy.—Evidence.—There is no absolute presumption at law as to the continuance of life, nor any absolute presumption against a party doing an act because the doing of it would make him guilty of an offence against the law. In every instance the circumstances of the case must be considered. (*The King v. Twynning*, 2 B. & Ald. 386, explained).

A., a Scotchman, married in Scotland and went abroad; his wife cohabited with *C.*, and had children by him. To make such children legitimate it was held necessary for those who asserted their legitimacy, to prove either a legal origin of the cohabitation, or a change in the nature of it after the death of *A.* had become known to all the parties. The mere fact that *C.* and the woman continued to live together was not sufficient for that purpose. Under such circumstances the children were held illegitimate, though born after the date of *A.*'s death.

Quere, *C.* and *B.* live together as man and wife, in the *bona fide* belief that *A.*, to whom *B.* had been lawfully married, was dead; in fact he was alive; will his subsequent death, during the continuance of their cohabitation, confer on it, according to the law of Scotland, the character of a legal marriage. *Lapsley v. Grierson*, 1 House of Lords' Ca. 498.

Cases cited in the judgment: *Cunningham v. Cunningham*, 2 Dow, 482; *Rex v. Harborne*, 2 Ald. & El. 540.

SPECIFIC PERFORMANCE.

Lien.—The appellant having claimed to be a partner with one Paynter in gas-works, which the latter had erected and was about to sell to a company then about to be formed, it was agreed between them, for the purpose of ending their disputes respecting the ownership of the gas-works, that Paynter should be at liberty to sell the works at such price as he pleased, upon accounting to the appellant for the value of the works at a certain rate, and that Paynter should hold shares for the appellant in the company to the value of 2,000*l.* for two years. The company having been formed, and having purchased the gas-works from Paynter, the appellant filed a bill against him, and obtained a decree for specific performance of their agreement. Before that decree was made, the company was dissolved, and the gas-works sold to the Ratcliff Gaslight and Coke Company. The appellant then filed a new bill against Paynter, the Ratcliff company, the directors of the dissolved company, and the assignees of Paynter, who had become bankrupt, to establish a lien upon the gas-works for what should be found due to him under the former decree, as well as to carry out the former decree against all these parties.

Held, by the House of Lords, affirming a

decree of the Vice-Chancellor, that the sale of the gas-works by Paynter to the London company was authorised by the appellant's agreements; that he had no just claim against the company, or lien on the property, and that the supplemental bill was properly dismissed, with costs, as against all the defendants, except Paynter and his assignees. *Pinkus v. Ratcliff Gaslight and Coke Company*, 1 House of Lords' Ca., 309.

VENDOR AND PURCHASER.

Completed contract.—Imputed fraud.—A bill filed by a purchaser to set aside a purchase and conveyance of an estate, on the ground of fraudulent concealment of a right of way, dismissed with costs, there being no proof of concealment by the vendor, although the dealings were inconsistent with any right of way.

To set aside a purchase, perfected by conveyance and payment of the purchase-money, for fraudulent concealment by the vendor of a defect in the title, where there was no warranty or statement that there was no defect; proof of concealment by the vendor's agent is not sufficient, there must be proof of direct personal knowledge and concealment by the principal.

A purchaser of an estate, having made no inquiry respecting the title from an agent for the sale, is not entitled to any relief for non-communication of any defect by him.

Constructive knowledge of an agent, or knowledge acquired by him otherwise than as an agent for the sale, of a fact, the non-communication of which is made the ground for relief against the purchase, does not at all affect the contract.

Constructive notice is resorted to from the necessity of finding a ground of preference between equities otherwise equal, but cannot be applied in support of a charge of direct personal fraud.

Where a purchaser seeks to be relieved against the purchase on the ground of personal fraud by the vendor, and the alleged fraud is not proved, he is not entitled to relief on any other ground. *Wilde v. Gibson*, 1 House of Lords' Ca., 605.

WILL.

1. **Shifting clause.—Younger son.**—In construing a will, the words "younger son," used by the testator in a proviso for shifting, in certain events, of an estate thereby devised, are to be taken in their plain and ordinary sense, as meaning "younger in order of birth," unless it satisfactorily appears from other parts of the will that they were used by the testator in another sense. *Wilbraham v. Scarisbrick*, 1 House of Lords' Ca., 167.

2. **Fraud.—Probate.—Jurisdiction.**—A testator, by his will and codicils, gave *R. A.* large bequests, which he revoked by a final codicil, providing only a small weekly allowance for him during his life. The will and all the codicils having been admitted to probate, after litigation as to the last codicil in the Ecclesi-

astical Court, *R. A.* filed a bill in Chancery alleging that the testator had executed the last codicil under undue influence of the residuary legatee, and false representations made at her instance respecting *R. A.*'s character; and that he had not been permitted in the Ecclesiastical Court to take any objections to that codicil, except such as affected the validity of the whole instrument; the bill therefore prayed that the executors or residuary legatee might be declared trustees or trustee for *R. A.* to the amount of the revoked bequests.

Held, on demurrer, that the Court of Chancery had no jurisdiction in the matter, (*dis-sentientibus*, Lord Cottenham, (Chancellor,) and Lord Langdale, M. R.) and that the proper course would have been an appeal to the Judicial Committee of the Privy Council against the sentence of the Ecclesiastical Court. *Allen v. M'Pherson*, 1 House of Lords' Ca., 191.

3. *Construction.*—*Issue in tail male.*—A testator devised freehold estates to trustees in trust to settle and convey them to the use of *G. R.* for life, with remainder to his issue in tail male, in strict settlement, and in default of such issue the estates to go over. *G. R.* had no son, but had several daughters, all born after the testator's death.

Held, that the words "in tail male" were descriptive, not of the issue, but of the interest they were to take, and that the daughters were entitled to take, under the limitation in remainder, as tenants in common. *Trevor v. Trevor*, 1 House of Lords' Ca., 239.

4. *Remoteness.*—A testator, after devising and bequeathing all his real and personal estates to trustees, on trust, from time to time, to receive the rents and profits, and therewith to pay various legacies and annuities, directed that they should invest the surplus rents and profits at interest, and suffer the same to accumulate; and he declared that they should stand seised of his said trust estate and the accumulations, upon trust, that when and as soon as any son of either of his nephews, *A.* and *B.*, should have attained the age of 25 years, a valuation of his said trust estate should be made, and that the same should be divided into as many equal lots as there should be sons of his said nephews then living, and thenceforth separate accounts should be kept of the respective portions; and that each of his said nephews' sons, when and as they should respectively arrive at the age of 25 years, should choose one of such portions as the share to be allotted to him and his children, and that thenceforth the said portion or share should be held by trustees, upon trust for the person so selecting the same for his life, and after his decease, upon trust, as to one equal moiety, for his eldest son, and his heirs, executors, &c.; and as to the other moiety, for the rest of his children, and their heirs, executors, &c., in equal proportions, and if but one child, both moieties to such child absolutely; but if any or either of his said nephews' sons should die under their respective ages of 25 years, or having attained that

age should afterwards die without leaving issue, the share or shares intended for the person or persons so dying should go to the others and other of the said nephews' sons; and if all but one should die without leaving issue, the trustees should stand seised and possessed of the whole trust estate, in trust for such one surviving nephew's son for his life, and for his children or child as aforesaid; but if all the testator's said nephews' sons should depart this life without leaving issue, then upon trust for such person as should at that time be the testator's heir. At the time of the testator's death, *A.* and *B.* had several sons living, and *B.* had another son born afterwards: *Held*, upon the construction of the will, that the trusts for accumulation and division of the property comprised all the sons of the nephews, who should be living when the first of them should attain 25; and as the son who should first attain that age might not be born until after the testator's death, the gifts were too remote, and therefore void: and the testator's real estate upon his death became vested in his heir.

Held, secondly, that under a bequest of real and personal estates, upon trust to receive the rents and profits, and to pay legacies and annuities, and vest the surplus rents, &c., for other purposes, the personal estate is the primary fund liable to the payments, there being no direction to discharge it, or to sell the real estate, so as to constitute a mixed fund. *Boughton v. Boughton*, *Boughton v. James*, 1 House of Lords' Ca. 406.

Cases cited in the judgment: *Leake v. Robinson*, 2 Meriv. 363; *Booth v. Blaisdell*, 19 Ves. 516.

5. *Chattels real and personal.*—*Vesting.*—A testator, after devising real estates to trustees, to the use of *J. D. P.* for life, remainder to his first and other sons in tail male, with like remainders to *J. T. P.* for life, and to his sons in tail male, and to several others, bequeathed real and personal chattels to the same trustees, to permit the said *J. D. P.* to receive the profits for his life, and from his decease to permit each of the several other persons, to whom an estate for life in the real estates was before limited, as each of them should become seised of the said real estates under the aforesaid limitations, to receive the rents and profits thereof for his and their life and lives respectively; and from and after the decease of the last of the said tenants for life as should become seised in manner aforesaid, or if none of them should become so seised, then from the decease of the said *J. D. P.*, upon trust to assign and convey the chattels to such person or persons as should then become seised of the said real estates under any of the limitations aforesaid.

Held, that the chattels vested in an infant, grandson of *J. D. P.*, who was tenant in tail of the real estates at *J. D. P.*'s death, and not in his eldest son, a prior tenant in tail, who died in *J. D. P.*'s lifetime. *Potts v. Potts*, 1 House of Lords' Ca., 671.

See *Heir-at-Law*.

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AMENDMENT OF THE COUNTY COURTS ACT.

THE bill introduced by the Attorney-General, to "Amend the Act for the more easy recovery of Small Debts and Demands in England, and to abolish certain Inferior Courts of Record," came to hand so recently before our last publication, as to admit of nothing more than a cursory glance at its provisions, which are well deserving the attention of all who take an interest in the administration of justice in civil matters. The merits as well as the defects of the proposed measure are rather of a negative than a positive character. It does not do all the mischief which was apprehended when it was rumoured that it was contemplated to increase the jurisdiction of the County Courts in actions for money demands to 50*l.*, and in actions for torts to 20*l.* On the other hand, the bill affords no remedy for the grievances, universally felt and constantly complained of by the suitors of the County Courts, arising out of the present constitution and practice of those Courts.

After declaring the expediency of extending the provisions of the 9 & 10 Vict. c. 95, for depriving of costs plaintiffs unnecessarily bringing actions for small debts or demands in the Superior Courts, the bill proceeds to repeal sections 128 and 129 of the County Courts' Act, and substitutes for them the following enactments:—

"That if, in any action commenced after the passing of this act in any of her Majesty's Superior Courts of Record in covenant, debt, detinue, or assumpsit, not being an action for breach of promise of marriage, the plaintiff shall recover a sum less than 20*l.*, or if in any action commenced after the passing of this act in any of her Majesty's Superior Courts of Record in trespass, trover, or case, not being

an action for malicious prosecution, or for libel, or for slander, or for criminal conversation, or for seduction, the plaintiff shall recover a sum less than 5*l.*, the plaintiff shall have judgment to recover such sum only, and no costs, except in the cases hereinafter provided; and it shall not be necessary to enter any suggestion on the record to deprive such plaintiff of costs."

There is a similar provision with respect to actions commenced in "any Inferior Court of Record, except the County Courts, or the Sheriff's Court of the City of London," (under the 10 & 11 Vict. c. 71,) with this distinction, that it is proposed a plaintiff bringing an action on contract in an Inferior Court, and recovering less than *ten pounds*, is to be deprived of costs.

The general enactment, depriving a plaintiff of costs, is modified, however, by the sections which follow, and which provide—

"That if the plaintiff shall in any such action as aforesaid, either in one of the Superior Courts of Record or in an Inferior Court of Record, except as aforesaid, recover a sum less than the sum in that behalf herein-before mentioned by verdict, and the judge or other presiding officer before whom such verdict shall be obtained shall certify on the back of the record that it appeared to him at the trial that the cause of action was one for which a plaintiff could not have been entered in any such County Court as aforesaid, or in the said Sheriff's Court, or that it appeared to him at the trial that there was a sufficient reason for bringing the said action in the Court in which the said action was brought, the plaintiff in such case shall have the same judgment to recover his costs that he would have had if this act had not been passed."

And "That if in any such action, either in one of the Superior Courts or in an Inferior Court of Record, except as aforesaid, whether there be a verdict in such action or not, the plaintiff shall make it appear to the satisfaction of the Court in which the said action was brought, upon motion to be made in Court for that purpose, and on hearing the parties by

affidavit, or, if the said action be in one of the Superior Courts, to the satisfaction of a judge at chambers upon summons, that the said action was brought for a cause for which no plaint could have been entered in any Court holden under the said act of the 10th year of her Majesty, or the said act of the 11th year of her Majesty, or that the plaintiff at the time when the action was commenced dwelt 20 miles from the defendant, or that no material part of the cause of action arose within the jurisdiction of the Court holden under the said act of the 10th year of her Majesty, within which the defendant at the time of the commencement of the action dwelt or carried on his business, or within the jurisdiction of the Court holden under the said act of the 11th year of her Majesty, if the defendant then dwelt or carried on his business within the jurisdiction of that Court, or that any officer of such County Court was a party to the said action, or that the said cause was removed from a County Court by *certiorari*, then and in any of such cases the Court in which the said action is brought, or the said judge at chambers, may thereupon by rule or order direct that the plaintiff shall recover his costs, and thereupon the plaintiff shall have the same judgment to recover his costs that he would have had if this act had not been passed."

The effect of these provisions is, to shift from the defendant, on whom it now lies, the burthen of proving that an action in which less than the specified sum is recovered, ought to have been brought in the County Court, and to throw upon the plaintiff, in order to entitle him to costs, the onus of showing that the action was brought for a cause for which no plaint could have been entered in the County Court. The importance of this alteration of the law, and the additional discouragement it throws upon parties proceeding in the Superior Courts, will be readily appreciated by our professional readers. To others it will be rendered sufficiently intelligible by the mere statement, that the recovery of a less sum than 20*l.* in actions founded on contract, or 5*l.* in actions of tort, will deprive the plaintiff of costs, unless he can induce the judge who tried the cause to certify so as to entitle him to costs, or the Court or a judge at chambers to order that the plaintiff shall have his costs.

Some doubts having arisen as to the prisons to which the judges of the County Courts were authorised to commit for fraud or contempt, the bill contains a very comprehensive enactment on this subject.

And in order to settle the doubts which have arisen, as to the *priority of the claim of the landlord for rent*, in case of levy under the 9 & 10 Vict. c. 95, s. 107, it is proposed to enact :—

"That where any distress shall be made under the last-recited enactment as well for the amount of rent so claimed, and the costs of such additional distress, as for the amount of money and costs for which the warrant of execution issued under the said act, and no replevin shall be made of the goods so taken, such sum of money as shall be due to the landlord in respect of the rent so claimed shall be paid in priority to the money and costs in respect of which the warrant of execution issued."

Unlimited powers are also given to the Secretary of State, with the consent of the Treasury, to alter the fees payable upon proceedings in the County Courts. The section is as follows :

"That it shall be lawful for one of her Majesty's principal Secretaries of State, with the consent of the Commissioners of her Majesty's Treasury, from time to time to regulate or vary, lessen or increase, the fees or sums in the name of fees now payable, or which from time to time may be payable, on the several proceedings in the Courts holden under the said act of the 10th year of her Majesty to the Judges, clerks, and High Bailiffs of such Courts, and such fees or sums may be so regulated from time to time by way of per-centage on the amount of the demand ; and such Secretary of State, with such consent as aforesaid, may from time to time appoint, instead of all or any of the fees or sums in the name of fees now payable or which may be from time to time be payable as aforesaid, other fees or sums by way of per-centage or otherwise, and to be payable on such proceedings under such last-mentioned act as such Secretary of State with such consent as aforesaid may direct."

The Palace Court, on which so much has been written and said, as well as the Peveril Court, are thus briefly *disposed of* :—

"And whereas it is expedient to abolish the Court of the Marshalsea of the Household of the Kings of England, and the Court of our Lady the Queen of the Palace of the Queen at Westminster, and her Majesty's Court of Record for the Honour of Peveril, and additional limits of the same : Be it enacted, That from and after the *passing of this act* no action or suit shall be commenced in any of the said Courts."

By subsequent clauses, actions depending in the abolished Courts are to be transferred to the Court of Common Pleas, when the debt or damages sought to be recovered exceed 20*l.*, and to the County Court for the district in which the respective defendants reside, if the debt or damages shall not exceed 20*l.* The records of the abolished Courts are to be placed under the charge of the Master of the Rolls ; and it is also proposed to enact, that all judgments obtained in those Courts, previously to the last day

of December, 1849, may be enforced as heretofore.

The clause by which it is proposed to give compensation to the officers of the abolished Courts is as follows, but the schedule referred to therein is left in blank, to be filled up, we presume, in committee :—

“ And whereas it is expedient and just that due provision should be made for the compensation of the officers having a freehold in their offices in the said Courts, of the Marshalsea, of the Palace of the Queen at Westminster, and for the Honour of Peveril and additional limits of the same, for the losses they will respectively sustain by the abolition of their said offices: Be it enacted, That upon the abolition of such Courts there shall be issued and payable out of and charged upon the Consolidated Fund of the United Kingdom of Great Britain and Ireland, to the several judges, counsel, attorneys, and other officers respectively named in the schedule (A.) hereunto annexed, such sums respectively as in the said schedule are put opposite to their respective names, either by the year or otherwise, as in the said schedule is particularly mentioned.”

Upon the question of compensation, we have already intimated our opinion, that the prevailing feeling out of doors is unjust and unfounded. The Palace Court officers possibly received compensation some time since, when they were really entitled to none, because the anticipated diminution of profits, for which they were compensated, did not actually occur; but when it is proposed to abolish the Court altogether, for the supposed benefit of the public, those who have *lawfully purchased their situations* are clearly entitled to consideration upon every just and equitable principle.

The abolition of the Palace Court, however, is a matter of comparatively minor importance. It is much more matter of public concern to find that the framers of the present bill have not thought it expedient to adopt any of the amendments so much required in the constitution and practice of the County Courts. The absurd and indefensible system, under which suitors are practically prohibited from obtaining competent professional advice, when compelled to resort as suitors to those Courts, is continued by the present bill, and the evil materially aggravated by the section first above cited. The grievance of obliging a plaintiff to incur the expense and inconvenience of attendance in person, and with all his witnesses, when no defence is intended or sought to be established, remains undressed; and no remedy is suggested for

what we are inclined to class amongst the greatest of all the defects of the County Court system, namely, the want of an *appeal to the Superior Courts*, under proper limitations and restrictions.

The number of applications to the Superior Courts to stay or set aside proceedings in the County Courts, affords pregnant evidence that the suitors in those Courts should not be left without the power of appealing. It is quite true that a great majority of the applications to the Superior Courts have been unsuccessful. The reason is obvious. According to the existing law, the Superior Courts can only interfere by writ of prohibition, and a prohibition only lies where there has been a want of jurisdiction, or an excess of jurisdiction, by the Inferior Court. Even where manifest injustice has been done, whether by ignorance, inadvertence, or mistake, if the judge of the County Court has apparently exercised his judgment upon a matter within his jurisdiction, there is no tribunal at present known to the law, which can afford a remedy to the party injured by the erroneous judgment. Therefore, where a party sued in the County Court found an officer of the Court in possession of his goods under an execution, but had never received any summons or notice of any proceedings against him previous to the execution, the Court of Exchequer held, that no prohibition could be granted, as the law had made the judge of the County Court sole arbitrator of the sufficiency of proof of service of the summons, and as soon as *he* was satisfied he had jurisdiction.^a So, likewise, when the defendant, in a plaint in the County Court, pleaded judgment recovered and execution issued for the sum claimed, and the plaintiff admitted the truth of the plea; but notwithstanding, the judge decided in favour of the plaintiff, a prohibition was refused, because the decision of the judge was on a matter within his jurisdiction.^b In such cases as these, there is in fact a positive denial of justice. But unless the principle upon which new trials are granted in the Superior Courts be essentially erroneous, we see no reason why the suitor in the County Court should be concluded, in *any case*, by the misconception or mistake of a judge, who, it cannot be considered offensive to say, is not more likely to be always right than the judges of the Superior Courts, presiding at

^a *Robinson v. Lenaghan*, 5 D. & L. 713.

^b *Espartero Rayner*, 5 D. & L. 342.

Nisi Prius or on Circuit. We venture to hope that it is not too late to urge the necessity of these and certain other amendments upon the consideration of the framers and the promoters of the bill now in progress. The attempt should, at all events be made.

Now that an amendment of the County Courts' Act is to take place, we have again to draw the attention of the legislature to the necessity of affording some protection to the profession against the practices of debt collectors,yclept accountants, agents, &c. They should no longer be allowed to transact business in those Courts; and, without meaning any disrespect to the learned gentlemen who preside as judges, the discretionary power now vested in them of allowing such characters as these to act in cases coming before them, should be repealed.

In various towns the profession are deeply injured by this practice. These unqualified persons also frequently prepare agreements and transact other business for their "clients," (as they call their employers,) which ought to be done only by professional men, who contribute so largely to the revenue for the privilege, and therefore it is but common justice that they should now be protected from unjust encroachments on their rights.

ANNUAL CERTIFICATE DUTY OF ATTORNEYS.

It will probably have been observed by most of our readers that Lord Robert Grosvenor had been compelled, by the state of public business, to postpone his motion for the Repeal of the Certificate Duty till the next Session. His Lordship had attended every Ballot for notices of motion, except one from which he was unavoidably detained, since the deputation attended him on his return from abroad, and it was only on the 26th June that he succeeded by his name being first drawn from the box to place another motion, in which, from benevolent motives he has long been interested, at the top of the List for the 17th instant.

Supposing Lord Robert Grosvenor to have been a second time so fortunate, he could only have given notice of the Repeal of the Tax on the 24th July, when many friends of the measure would be absent and

the Session drawing to a close. His Lordship therefore thought he should best consult the interests of those who had confided the case to his care, by deferring the motion till an early day in the next Session, *when he hopes to be successful in removing the impost.*

On first hearing of this postponement, we were much disappointed; although, we confess, we had expected that nothing more could be done at present than obtaining leave to bring in the Bill, and having it printed for consideration in the next Session. We remember, however, that the beneficial Act for the consolidation and amendment of the Law of Attorneys was three Sessions before Parliament; and every one is well aware how slow is the progress of all legislative measures of importance, even where there are none of the *financial* difficulties which beset this question.

When we consider the various pressing subjects before Parliament, our disappointment is perhaps unreasonable. The affairs of Ireland—the Colonies—our Foreign Affairs—with the various topics of domestic policy—on all of which there is no end to discussion;—and added to which are the difficulties in the way of obtaining a hearing, unless it be a Government measure, or some notable subject of political interest;—when these hindrances are considered, we ought, perhaps, not to be surprised that our hopes are again deferred. We are consoled, however, with the reflection that the cause is a just one,—is in sincere, able, and powerful hands,—and that it must ultimately prevail.

The *Charitable Trusts* Bill, which is a government measure, and calculated to carry with it a large increase of political patronage, has been already postponed; and it must be by great efforts if the *Bankrupt Law Consolidation* Bill be conducted to a successful result. A long list of other "Law Bills in Parliament" must necessarily be deferred. Seeing these things, we ought not to wonder that the Attorneys have not found a willing ear in the House of Commons, or a disposition to relieve them (however justly) of a burthen which it may be supposed would fall upon other classes of the community. If indeed the 90,000*l.* a year raised by this Tax cannot be spared, it ought to be levied on all professions and callings, and the individual amount would then be insignificant. We shall have a suggestion to make on this subject for removing the financial difficulty, and effecting an important public object.

* See a letter on this subject in the *Legal Observer* of 26th May last.

DEFECTS OF COURTS MARTIAL.

TRIAL OF CAPTAIN GEORGE DOUGLAS.

ALTHOUGH our principal duty is for the most part confined to the consideration of the various alterations in the law, whether projected or carried into effect,—to a brief chronicle of the decisions in the Superior Courts,—and to the discussion of all matters affecting the character and interests of the profession,—it is within our province as a “Journal of Jurisprudence” to observe upon and call attention to all defects and irregularities in the administration of justice. With this view we lately noticed the proceedings at the Court Martial on Captain George Douglas, at Guernsey.* We deem it, indeed, our duty, on the part of the profession, to show that the failure of justice on that trial palpably proceeded from the want of an intelligent Lawyer to assist the Court on questions touching the admission or rejection of evidence; and we think the public in general will agree with us, that if there were no Barrister or Solicitor at Guernsey of sufficient experience in the rules of evidence to act as Deputy Judge-Advocate, a competent person should have been sent from London, or procured from the nearest county, to perform the legal duties of that office, which ought not to have been solely confided to a Military Officer, of whatever merit in his own profession. In the outset of this discussion, we fully admit that the Court Martial intended to discharge its duty, and that it failed in doing so, not from any improper bias towards the prosecutor, nor prejudice against the prisoner, but because it had not all the legal and proper evidence before it, nor the assistance which a legal Judge Advocate could supply in sifting that evidence and deducing just conclusions.

The *United Service Gazette* of the 23rd June, in an article on this case, well remarks, that “In Civil Courts it is a maxim, justified by every day’s experience, that the man who is his own lawyer has a fool for his client. Military Courts would practically enforce an opposite doctrine.” Not only the military, but many of the daily and weekly public journals, since we first noticed the subject, have strongly and inadvertently on the result of the case; and as it involves very important principles in the conduct of prosecutions and the rules of evidence, we consider it right to place before our readers such extracts as may enable

them to form a judgment for themselves on the complaint made by Captain Douglas, that he has not had a *fair trial*, and that, on the one hand, illegal evidence has been admitted on the part of the prosecution, and on the other, unobjectionable evidence for the defence rejected.

In our former article, we noticed the substance of the first and most important charge preferred against Captain Douglas, for conduct “unbecoming the character of an officer and a gentleman.” We shall now set forth the whole of the charges before the Court Martial. They were as follow:—

“1st.—For having, on or about the 8th January, 1849, when asked by constable Renier, in the barracks at Longy, in Alderney, whether he had a knowledge of the person or persons who had been firing ball on the ramparts of Longy Battery on the 5th January, 1849,—answered that he had no knowledge of such person or persons; whereas he, Captain Douglas, well knew, at the time he so made that answer, that he himself had been firing ball on the said ramparts on the said 5th January, 1849.

“2nd.—For having, at the Civil Court at Alderney, on the 9th January, 1849, and before a Military Court of Inquiry, in the same place, on the 15th and 16th February, 1849, and from the said 9th January till the 16th February, 1849, omitted, and neglected, and refused to acknowledge that he, Captain Douglas, had, on the 5th January, 1849, been practising ball-firing on the ramparts at Longy Battery, in the said island, thereby intending to conceal the fact that he, Captain Douglas, had been so practising ball-firing on the said ramparts; although he, Captain Douglas, knew that the said Civil and Military Courts were engaged on the said 9th January and the said 15th and 16th February, 1849, respectively as aforesaid, in prosecuting an investigation as to the cause of the death of a bullock, supposed to have been shot near the said ramparts on the said 5th January, and that one of the objects of inquiry in such investigation was to ascertain who it was that was or were using fire-arms on the said ramparts on such day, and especially whether it was Captain Douglas who had been using fire-arms on the said ramparts.

“3rd.—For having, on or about the said 9th January, 1849, at Alderney aforesaid, when asked by Mr. Gaudion, the Judge of the said Island of Alderney, with a view of ascertaining whether he, Captain Douglas, had been practising ball-firing on the said ramparts, how he accounted for the ‘Times’ London newspaper, to the address of him, Captain Douglas, being found on the ground (meaning the said ramparts of Longy Battery), answered evasively, ‘that he (Captain Douglas) could not be accountable for newspapers in his name;’ adding, ‘that his papers travelled through the barracks, and even in the town’—he Captain Douglas,

* See page 122, ante.

at the same time knowing, and having afterwards stated, that he had, on the day in question, placed a newspaper against the wall of the said ramparts, in order to make a potato, which he had used as a mark to shoot at, more distinctly visible, and intending, by such evasive answer, to conceal the fact that he had been practising ball-firing on the said ramparts on the said 5th January.

"4th.—For having, on or about the 11th February, 1849, at the said Island of Alderney, addressed a letter to the Town-Major of Alderney, with the apparent intention of explaining his conduct with reference to certain paragraphs in newspapers respecting him, Captain Douglas, and also in reference to the inquiry prosecuted in the Civil Court of Alderney, as to the cause of the death of the bullock near the said ramparts, and as to who were discharging fire-arms on or near the said ramparts on the 5th January, and especially whether Captain Douglas had discharged fire-arms on or near the ramparts on that day; in which letter he, Captain Douglas, failed and omitted to state whether he had or had not discharged *fire-arms* on or near the said ramparts on that day; but, on the contrary, by various evasive passages in such letter, suggesting that other persons than himself had been discharging fire-arms on or near the said ramparts on that day, endeavoured further to conceal the fact that he, Captain Douglas, had been practising ball-firing on the said ramparts on that day."

We have already particularly noticed the first charge. The second, it will be seen, is founded on the alleged *omission, neglect, and refusal* to acknowledge the fact of ball-firing. But we know of no military law (nor any other) which requires an accused person to acknowledge a fact which may subject him to an action or prosecution. On the contrary, according to Simmons on Courts Martial, page 97, (3rd edition,) the accused has "a right to decline answering any questions or making any statement, which may in his opinion be prejudicial to him in the course of any ulterior inquiry." "It is a characteristic of all British jurisprudence that the accused shall be protected from answering all questions which may tend to criminate himself." It appears, on the examination of Ensign Parker for the defence, that this passage had been referred to by Captain Douglas, on going to the Court of Inquiry with Mr. Parker; and it was therefore proposed to read the passage to the Court Martial: but the president said, "Oh, no, we will have no law books read here!"

Looking at the evidence in support of the charge, we extract the following from the able cross-examination (conducted by Mr. Warren) of the Judge of the Civil Court:—

"Q. After all your investigations, do you now believe that I was in any way concerned in causing the death of this bullock?"

A. Judging from the evidence produced before my Court, I should say not.

Q. Have you now any reason whatever to believe that I caused the death of the bullock?"

A. No, I have not.

Q. Did I ever *refuse to acknowledge* before the Civil Court that I had been practising ball-firing on the 5th January on the ramparts at Longy Battery?"

A. No.

Q. Do you know the constable Renier well?"

A. Yes.

Q. Has he such a knowledge of English or French as to enable him to speak satisfactorily as to the exact nature of expressions in English?"

A. That question can lead only to the expression of an opinion. I should say that he is more conversant with French than English. I should doubt his understanding the exact meaning of expressions in English. I may be right, or I may be wrong.

Q. Is French or English his native tongue, and does he not give his evidence in your Court in French?"

A. French is his native tongue; and he gives his evidence in French before my Court.

Q. When I came to you on the 16th February, did I not say I was innocent of the death of the bullock, and wished to have the fullest inquiry to take away all *suspicion* even, or words to that effect?"

A. I cannot recollect the precise words used, but the impression I have is, that Captain Douglas did use words to that effect; and I recollect he expressed a very strong wish that the investigation should proceed, as it would clear him of the imputation (that gives the sense of his meaning), which he was led to suppose existed against him, of having shot the bullock.

Q. Do you, in fact, now believe that the bullock in question had been shot at all?"

A. The evidence produced before my Court did not lead to that fact: and as for the rest, I can't form an opinion. I go only by the evidence brought before me in my Court in Alderney."

This testimony evidently overthrows entirely the imputation of refusing to acknowledge the fact in question. We have not space for a full analysis of the evidence on the several charges, and must confine ourselves to what is, indeed, our proper business,—the exposition of the admission of improper and the rejection of proper evidence.

The following are instances of the *admission of evidence* which ought to have been rejected. Constable Renier is asked—

"Q. Did you ask Captain Douglas whether he knew who the person was who had been firing?"

A. I asked him if he knew the person who had done it—meaning the shooting. I did not ask him who had been firing. I asked him whether he knew anything of the firing which had taken place on the 5th. [Read over, witness corrects himself,—“I did not ask him if he knew the person, but if he knew anything about it.”]

Q. What do you mean by ‘had done it?’

Captain Douglas here begged to say that he considered the question objectionable. The point was, not what the witness meant, but what he said to Captain Douglas, at the time; so that the Court might be placed in the situation of persons present at the interview between him and the constable.

The President ordered the Court to be cleared. On its being re-opened, he said—‘The Court decides that there is no objection to the question!’”

This reasonable objection would clearly have been allowed had the Court been assisted by any lawyer of the least experience. Again, at page 13 of the report, Colonel Le Mesurier is asked, on the part of the prosecution, what were the objects of the Court of Inquiry, and he answers—

“To ascertain as far as in our power lay, to arrive at every information of the circumstances connected with the allegations set forth in the ‘Comet’ newspaper, and there is other matter; but really I cannot charge my memory with all that the Instructions contained.

Captain Douglas objected, after some discussion, to the witness being asked what was the object of written instructions. Being desired by the Court to state the nature of his objection, he said, ‘It is founded on a universal rule in the law of evidence, that whenever there is a written document, it must be produced to speak for itself, in order to prevent mistakes or misconceptions as to its contents. In other words, the best evidence must be produced that can be: in this particular instance I am very anxious to see the instrument in question.’

The Court was cleared. On being re-opened,

The President said, the Court is of opinion that the examination in chief must proceed in its course, and that the question objected to is admissible!”

On the part of the prosecution, the same witness was asked whether Captain Douglas took any part in the proceedings at the Court of Inquiry, and the answer was:—

“He did. We gave Captain Douglas liberty to call whatever witnesses he pleased; and also, through the Court, permission to put any questions to the witnesses then before us; of which permission Captain Douglas availed himself.

Captain Douglas.—I object to the witness giving any verbal evidence as to what took

place at the Court of Inquiry; since the actual original proceedings before the Court will state what took place. This gentleman’s memory may be mistaken, and he may forget the tendency of the examination: the Court will judge for itself on reading it. I call for the ORIGINAL proceedings of the Court of Inquiry to be produced before the Court.

President.—With reference to the objection of the prisoner to the witness’s giving verbal evidence on the subject of the tendency of the examination before the Court of Inquiry, this Court is of opinion that verbal evidence of the witness is admissible, and exactly the evidence required; but, as Captain Douglas desires it, the proceedings of the Court of Inquiry may be appended to these proceedings. * * *

The Prisoner.—I wish the Court to understand my precise objection to the reception of verbal evidence given by the witness as to the tendency of the examination. The Court cannot devolve their own duty on any witness. I find it laid down in Simmons on Courts Martial, (pp. 442, 443,) that ‘It is clearly the duty of the Court to examine as to FACTS, and to apply those facts, by their own professional knowledge and experience, to the solution of the question in issue, and not to admit the opinion of a witness, when, by the most patient investigation, they could acquire such information on the subject, or such a detail of facts, as might render them competent to form a correct judgment. * * * The Court, being in possession of facts, are the only proper judges of their tendency.’—In the present instance, evidence as to the witness’s opinion of the tendency of the examination, is either *superfluous*, as the examinations themselves will enable the Court to judge of the tendency of them, or it is calculated to *prejudice* and *prejudice* the inquiry before this Court.

President.—It is no such thing. Such evidence is neither superfluous nor calculated to prejudice this inquiry. Clear the Court.”

The instances of *rejection of evidence* on the part of the accused, which ought to have been received, are still more numerous than those of the admission of improper evidence on the part of the prosecution. It was an important part of the defence, that Colonel Le Mesurier, who presided at the previous Court of Inquiry, and (as it was alleged) had been mainly instrumental in causing Captain Douglas to be brought to a Court Martial, was actuated by motives of animosity and revenge. There may or may not have been good grounds for this imputation; but when he appeared as a witness, it is clear that Captain Douglas had a right to impugn his testimony. Colonel Le Mesurier is asked on cross-examination—

“When did you first believe that I had made an untrue statement to Renier?”

President.—Clear the Court.

On its resuming, Captain Douglas was informed by the President that the Court rejected this question.

Q. Did you ever know there was a report that I had made an untrue statement to Renier?

Upon the Court inquiring the object of this question,

Captain Douglas stated—“I wish to show by these questions that I have not been fairly or candidly dealt with by the witness, whose duty it was to have given me the earliest intimation of the existence of the imputation in question, and afforded me thereby an opportunity of at once proving the groundlessness of the charge.

The Judge-Advocate, at the desire of the President, entered on the proceedings that the Court could receive no evidence which might inculpate another who had no opportunity of defending himself.

Captain Douglas added—“I beg to ask whether I am precluded by the intimation of the Court from attempting to show, by questions to the witness, that there was a personal hostility on the part of Colonel Le Mesurier against me, so as to bias his conduct and to place me disadvantageously before the Authorities who ordered this investigation? And may I not endeavour to find out how this charge found its way to General Bell, and the Authorities at the Horse Guards?”

The Court, the next day, made the following decision:—

“The Court cannot admit questions of this nature unless the prisoner can show *prima facie*, that they bear directly on any point of the charge. The witness's conduct to the prisoner at Alderney cannot be made a subject of investigation here, unless shown to be so connected. The mode in which the charge found its way to General Bell is irrelevant to this inquiry, and is, besides, already in evidence in the Fort-Major's letter of the 6th February, 1849.”

Captain Douglas then read a statement to the Court of his legal right to cross-examine the witness on the points proposed, and, after withdrawing with Mr. Warren for a short time, added the following explanation of the object of the questions put to Colonel Le Mesurier:—

“One of the chief objects of my questions is, to show what was passing through my mind at the time to which the attention of the Court is directed. The inquiry is into an alleged falsehood told by me, and (as far as I understand the charges) a dishonourable and fraudulent suppression of truth, and evasion of lawful inquiries. My defence is, first, to deny these charges in point of fact, and then to show to the Court reasons for believing that I could not possibly be guilty of such conduct as I suppose to be imputed to me, but was influenced by prudent and honourable motives, such as I was justified in acting upon, in my

own defence against liabilities sought to be attached to me, as I felt, unjustly.

“I was particularly anxious to make no statement which I was not bound to make to Colonel Le Mesurier, because I honestly believed at the time, and will distinctly prove it, that he might have turned any admission made by me to my disadvantage. I will prove a statement of his own, made about the 17th March, to a gentleman, whom I will call before the Court, that ‘if Colonel Le Mesurier and myself had been on good terms, he would have settled the matter the first day, by going to me, and to Mr. Bisset, the owner of the bullock, and explaining to him how the fact was. That he would have put me upon my honour, and found out all about it.’

“I will also prove that Colonel Le Mesurier and I were on unsatisfactory terms, and had had serious differences and misunderstandings, about the extent of my authority over the men of my detachment, and another serious matter. I will also show that I had grounds for believing that he was indisposed to allow me to go at once to General Bell to make a full explanation; and the way in which I connect this with the charges is, that as they necessarily involve *motive and intention* on my part, at the time, I had good motives for being very guarded in my statements and admissions to any one, at that time, and especially to Colonel Le Mesurier; but that, as soon as I could with safety do so, I made a full, unqualified, and honourable statement of all I knew.”

The cross-examination was then allowed to proceed to a certain extent, and from which we extract the following passages:—

“Q. Do you know Mr. Bains, a Surgeon at Alderney?

A. Yes, very trifling.

Q. Did you ever mention to him anything about me, with reference to this accusation?

A. I may have had some trifling conversation with Mr. Bains, and on the morning, or rather I should say in the afternoon, that I had the painful duty to perform, to place Captain Douglas under arrest.

Q. Did you say to him that you would have ended the matter of the bullock the first day, if you and I had been on good terms, or words to that effect?

A. I certainly recollect saying, but I cannot say on what occasion, that I said I regretted exceedingly that a misunderstanding existed between Captain Douglas and myself, for had Captain Douglas come to me the day after the occurrence, when I returned to Alderney, I should have been happy to have settled the matter without its coming before the public.

Q. Did you not say you would have gone to see Mr. Bisset, and explained to him how the fact was, and that you would have put me on my honour, and found out all about it, or words to that effect?

A. I cannot charge my memory with the whole of that. In my former answer I said as much as I can possibly say on the subject,

which was this, that had I been applied to on my landing in Alderney, I would have used my best endeavours to have settled the matter.

Q. Did you say anything about putting me on my honour, or words to that effect?

A. I have no recollection of the circumstance.

Q. Would you have believed; or disbelieved; me if I had made a deliberate statement upon honour?

A. I would have believed Captain Douglas, of course.

Q. Did you not go to inspect the carcase of the bullock on the 8th January?

A. Certainly I did not go to inspect it. I saw it by accident."

The President here turned to the witness and told him "he was not bound to reply to any question tending to show hostility on the part of the witness towards Captain Douglas, and that such was his object in putting such questions!" The witness, on several occasions, availed himself of this "ruling of the Court," and thereby manifestly impeded the course of the defence.

Again, on the further cross-examination of Colonel Le Mesurier, it appears from the Report, p. 41, that the prisoner handed in two questions, informing the Court that they tended to substantiate the statement which he had made. The first was:—

"Q. 'Had we disputes about the extent of my military authority over the men of my detachment at Alderney, previous to the 5th January?'"

The Court was cleared. On re-opening, the President suggested that the words 'difference of opinion,' should be substituted for 'disputes,' in this question, which Captain Douglas agreed to.

A. With due deference to the Court, I beg to decline answering that question, as the subject came before the Major-General, who decided upon it.

The second question was as follows:—

Q. 'Have we not had a misunderstanding, or difference of opinion, respecting the death of Private Riley's wife and child, and the inquest on them at Guernsey?'"

This question the Court decided was inadmissible, but at the request of the prisoner, recorded it."

On the cross-examination of Bisset, the owner of the ox, several questions were put, but disallowed by the Court:—

"Q. Have you had disputes with 'navvies' and others, about shooting at or near your farm?

A. I have had no disputes with 'navvies,' but two masons belonging to the building at the breakwater-wash.—

This answer was here interrupted by the President, as being totally irrelevant, and hav-

ing no earthly bearing on the charges. Captain Douglas expressed a contrary opinion, especially with reference to the last instance in the charge; but on the above intimation, withdrew the question.

Q. Were you ever informed by Colonel Le Mesurier, that General Bell had inquired into the matter, and was satisfied that no one at the garrison had shot the bullock?

The Court was cleared; and on re-opening, this question was disallowed—on the ground that General Bell could be called if the prisoner thought proper to do so.

Captain Douglas.—I believe the fact to be, that General Bell was so satisfied; and that Colonel Le Mesurier knew it. My object is still to show the motives which actuated Colonel Le Mesurier, and that I had reason to believe that he would have afforded me no facilities for clearing myself, if I had volunteered an admission that I had been firing. Besides, General Bell cannot answer the question which I ask this witness, and which is—whether Colonel Le Mesurier communicated to him a particular message?

The President refused to allow the question, and the prisoner requested that it might be recorded."

Then the examination of Ensign Parker for the defence was commenced, and we select the following important passages:—

"Q. Were you with me when I was firing at Longy, on the 5th of January last?

A. Yes, I was.

Q. Was it possible for the place where we standing to be seen by the men on guard?

A. No, it was not.

Q. Why not?

A. There was the angle of a hill intervening.

Q. In what direction were we firing?

A. With our backs towards the sea; we fired from the sea.

President.—The Court does not see the object of these questions; and thinks they do not bear upon the subject of their inquiry."

Q. Were people in the habit of firing in that neighbourhood?

A. Yes; people were constantly firing in the neighbourhood.

Q. Do you remember meeting Mr. Bains on the Bray-road, when you and I were together?

A. Yes.

Q. Have you heard that a bullock had been shot at Longy, on the 5th January?

A. Yes.

Q. When did you first hear it?

A. On the 8th January.

Q. From whom, and state how?

A. From Dr. Bains. I met him on that day, with Captain Douglas. He told us he understood a bullock had been killed at Longy, and

"Why! this went to the very root of the matter from which the complaint originated. The prisoner was firing in a direction opposite to that of the bullock, and therefore could not have shot it.

that a constable had gone down to Longy about it.

The President declared that this matter was quite irrelevant; that the tendency of this examination was totally irregular; and that the Court could not enter into the question of the death of the bullock—it was not consistent with their duty to enter into that question—‘that the Court can neither form an opinion nor found an investigation on it; and they finally decline to enter into it, in any way.’

This last sentence the President read out from a paper.

Captain Douglas.—I really feel embarrassed as to the course which I ought to pursue. I wish every part of my conduct at the time in question to be fully before the Court, especially that the minds of the Court should be convinced that I had no concern in the death of the bullock, or, at all events, that it should appear on the proceedings that I tendered distinct evidence for that purpose, and especially that of Ensign Parker, who knew all about the transaction; and I claim the benefit of that tender. If the Court be satisfied that I was in no way concerned in shooting the bullock, it will answer my purpose. It must be obvious to the Court, that if they be still uncertain on that point, my case before them is necessarily prejudiced, for they will fail to see the total absence of a motive for telling the gross falsehood now imputed to me.

The President.—I beg your pardon, Captain Douglas. If I follow correctly your line of cross-examination, it goes to give you a motive for not making any acknowledgment that you had been firing.

Captain Douglas.—Certainly, Sir; the two objects are perfectly consistent—to show the absence of a bad motive, and the existence of a good and justifiable one, for caution in what I did actually say and do. If I had really shot the bullock, it is clear—

The President.—We really can hear no more on that subject.

Captain Douglas.—Very well, Sir. *I bow to the decision of the Court.*”

Surely this cannot be maintained to be a just and legal rejection of improper evidence. The Court was inquiring into the truth of a charge against a British officer, involving his character for veracity and his honour as a gentleman,—accused of direct falsehood,—of the wilful suppression of the truth, and of mean evasion of lawful inquiries; and yet he is denied the right of showing that the *supposed fact* of the animal's death by a pistol-ball, on which the motive for concealment could alone rest, had *no existence whatever*; and that the charge originated in the gross ignorance or mistake of those who ought to have made preliminary inquiries before casting an imputation on any one. The business of the Civil Court was to inquire into the cause of the

death of the bullock, and we have seen it come to the conclusion that there was no evidence to show that it really had been shot; and then the Court of Inquiry was to ascertain whether there was any ball-firing, but without first ascertaining whether any mischief had arisen from it! The wise men of Alderney appear to have set out with the foregone conclusion, that the ox in question could not be killed except by a pistol-ball, and that whoever fired a pistol must be responsible for the death—never inquiring whether the animal was alive *after* the firing ceased, nor whether it was grazing in a *direction* or within a *distance* which the ball could reach. The connexion between the fall of Tenterden steeple and the discovery of the Goodwin sands rested upon the same kind of evidence. Firing of ball there was, and on the same day an ox was found dead. These were the only facts established. The connecting link between the two events was wanting. Captain Douglas knew that it was attempted to make him liable for the value of the ox, and the probability was that if he admitted he had been firing, the Alderney Court would have decided against him. He therefore did not *volunteer* that admission; but afterwards, when properly called upon, made it without reserve. He believed that advantage would be taken if he made any statement in the early stage of the inquiry, and he cautiously held his peace. This was “the head and front of his offending.”

On the former occasion we availed ourselves of an extract from Mr. Warren's defence upon the first and most important of the charges against Captain Douglas, and should have been glad to place before our readers some more passages, written with the accustomed force, eloquence, and legal and logical acuteness for which Mr. Warren is distinguished; but we have preferred selecting as largely from the actual proceedings before the Court as our space would permit.

We have now laid before our readers abundant evidence to prove, as we think, the necessity of securing *competent legal assistance* in conducting the proceedings of all future Courts Martial. If there be any permissible bias, in the reception or refusal of evidence on criminal trials, it should surely always be exercised in favour of the accused. He should have the benefit of every doubt. Let any one compare the decisions of the military President and military Judge-Advocate, at Guernsey, with those of

Mr. Baron Rolfe, at Norwich, on the late trial for murder, and say which of the several judges is entitled to the respect and confidence of the profession and the public. Verily, this Court Martial, whatever may be the result as far as concerns Captain Douglas, will mark an era in military jurisprudence—thus

“From seeming evil, still educing good.”

NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

[The Statutes of this Session printed in the last and the present Volumes, are as follow :—

Buckingham Assizes, vol. 37, p. 408.

Inclosure of Commons, vol. 37, p. 408.

Appointment of Overseers of Poor, vol. 37, p. 448.

Law of Larceny Amendment, vol. 37, p. 471.

Annual Indemnity, vol. 37, p. 489.

Petty Sessions in Counties and Boroughs, p. 78, *ante*.

Maintenance of Poor out of Workhouses, p. 101, *ante*.

Costs of Distraining for Highway Rates, p. 127, *ante*.]

DEFECTIVE POWERS OF LEASING.

12 & 13 VICT. c. 26.

An Act for granting Relief against Defects in Leases made under Powers of Leasing, in certain Cases. [26th June, 1849.]

1. *Interpretation of terms.*—Whereas, through mistake or inadvertence on the part of persons granting leases, and through ignorance on the part of lessees of the titles of persons from whom leases are accepted, leases granted by persons having valid powers of leasing are frequently invalid as against the successors in estate of such persons by reason of the nonobservance or omission of some condition or restriction, or by reason of some other deviation from the terms of such powers: And whereas leases granted in the intended exercise of such powers are sometimes invalid as against the successors in estate of the persons granting the same by reason that at the time of granting the same the person granting the lease could not lawfully grant such lease, although at a subsequent time, and during the continuance of his estate in the hereditaments comprised in such lease, he might have granted the same in the lawful exercise of such power: And whereas it is expedient that provision should be made for granting relief in the cases aforesaid, in manner after-mentioned: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That in construing this act words importing the singular number shall include

the plural number, and words importing the plural number shall include the singular number, and words importing males shall extend to females, and the word “person” shall include corporations aggregate or sole, unless in any of the cases aforesaid there be something in the context repugnant to such construction.

2. *Leases invalid owing to deviation from terms of the power to be deemed contracts in equity for such leases as might have been granted under the power.*—*Provido where the grantor or reversioner is willing to confirm.*—

That where in the intended exercise of any such power of leasing as aforesaid, whether derived under an act of parliament or under any instrument lawfully creating such power, a lease has been or shall hereafter be granted, which is, by reason of the non-observance or omission of some condition or restriction, or by reason of any other deviation from the terms of such power, invalid as against the person entitled after the determination of the interest of the person granting such lease to the reversion, or against other the person who, subject to any lease lawfully granted under such power, would have been entitled to the hereditaments comprised in such lease, such lease, in case the same have been made *bond fide*, and the lessee named therein, his heirs, executors, administrators, or assigns, (as the case may require,) have entered thereunder, shall be considered in equity as a contract for a grant, at the request of the lessee, his heirs, executors, administrators, or assigns, (as the case may require,) of a valid lease under such power, to the like purport and effect as such invalid lease as aforesaid, save so far as any variation may be necessary in order to comply with the terms of such power; and all persons who would have been bound by a lease lawfully granted under such power shall be bound in equity by such contract: Provided always, that no lessee under any such invalid lease as aforesaid, his heirs, executors, administrators, or assigns, shall be entitled by virtue of any such equitable contract as aforesaid to obtain any variation of such lease, where the persons who would have been bound by such contract are willing to confirm such lease without variation.

3. *Acceptance of rent to be deemed a confirmation.*—That the acceptance of rent under any such invalid lease as aforesaid shall, as against the person so accepting the same, be deemed a confirmation of such lease.

4. *Leases invalid at the granting thereof may become valid if the grantor continue in the ownership until the time when he might lawfully grant such a lease.*—That where a lease granted in the intended exercise of any such power of leasing as aforesaid is invalid by reason that at the time of the granting thereof the person granting the same could not lawfully grant such lease, but the estate of such person in the hereditaments comprised in such lease shall have continued after the time when such or the like lease might have been granted by him in the lawful exercise of such power, then and

in every such case such lease shall take effect, and be as valid as if the same had been granted at such last-mentioned time, and all the provisions herein contained shall apply to every such lease.

5. *What shall be deemed an intended exercise of a power.*—That when a valid power of leasing is vested in or may be exercised by a person granting a lease, and such lease (by reason of the determination of the estate or interest of such person or otherwise) cannot have effect and continuance according to the terms thereof, independently of such power, such lease shall, for the purposes of this act, be deemed to be granted in the intended exercise of such power, although such power be not referred to in such lease.

6. *Saving the rights of the lessees under covenants for title and for quiet enjoyment, and the lessor's right of re-entry for breach of covenant, &c.*—That nothing in this act contained shall extend or be construed to prejudice or take away any right of action or other right or remedy to which, but for the passing of this act, the lessee named in any such lease as aforesaid, his heirs, executors, administrators, or assigns, would or might have been entitled, under or by virtue of any covenant for title or quiet enjoyment contained in such lease on the part of the person granting the same, or to prejudice or take away any right of re-entry or other right or remedy to which, but for the passing of this act, the person granting such lease, his heirs, executors, administrators, or assigns, or other the person for the time being entitled to the reversion expectant on the determination of such lease, would or might have been entitled, for or by reason of any breach of the covenants, conditions, or provisos contained in such lease, and on the part of the lessee, his heirs, executors, administrators, or assigns, to be observed and performed.

7. *Act not to extend to certain leases.—Pending suits not to be prejudiced.*—That this act shall not extend to any lease by any ecclesiastical corporation or spiritual person, or to any lease of the possessions of any college, hospital, or charitable foundation, or to any lease where, before the passing of this act, the hereditaments comprised in such lease have been surrendered or relinquished, or recovered adversely by reason of the invalidity thereof, or there has been any judgment or decree in any action or suit concerning the validity of such lease, and shall not prejudice or affect any action or suit already commenced and now pending in any Court of Law or Equity, but every such action and suit may be proceeded with, and such relief had therein, as if this act had not passed.

8. That this act shall not extend to Scotland.

9. That this act may be amended or repealed by any act to be passed in this session of parliament.

NOTICES OF NEW BOOKS.

The Laws of Debtor and Creditor as they are and as they ought to be. By PETER HEALEY, a retired Solicitor of Thirty Years' Standing. London: S. Sweet. 1849.

THIS is a useful contribution to the various projects for the amendment of the Law of Bankruptcy. Mr. Healey, after describing the plan of his work, states in detail the defective principles of the existing laws, and then proceeds to set forth in opposite columns the laws as *they are* and as *they ought to be*. Our readers are well acquainted with the defects, and we shall place before them Mr. Healey's proposed remedies. First, he treats of private arrangements between debtors and creditors, in all of which we entirely concur.

"1. *By Deed of Inspection.*—This deed is seldom used, except in cases of the stoppage or temporary embarrassment of mercantile houses of the *highest class*, and is generally adopted by them only to *avoid* the Court of Bankruptcy. During the panic of 1847, when so many first-rate firms were prostrated, the deed of inspection had for choice a decided preference. This is another glaring proof of the unsatisfactory state of the bankrupt laws.

"To render such a deed as this of any value, it ought to be supported by legislative enactment to the effect, that a *majority* of the creditors shall bind the *minority*—say five-sixths in number and value, or eight-tenths in number only—excepting, perhaps, creditors of certain small amounts, say 10*l.*, or any other convenient proportions, with an *appeal* to the Court of Bankruptcy for the confirmation or rejection of the proposed arrangement on the terms of the deed, or some modification thereof. The appeal to be by the petition either of the debtor, or of one or more of the dissentients whose claim or united claims shall amount to a certain sum, say 50*l.*

"The Court must of course be vested with full powers to act and adjudicate in these cases, and to allow or disallow the appellant's costs; but it forms no part of the writer's *present* task to point out the requisite details.

"2. *By Deed of Composition.*—The same protecting powers by Act of Parliament which are above recommended for the *Deed of Inspection* ought also to be granted for the *Deed of Composition*, otherwise an arrangement of this sort cannot be effected upon a sure footing.

"3. *By Deed of Assignment.*—No arrangement with creditors is so uncertain in its effects, or generally so ruinous in its consequences, to the *honest* debtor, as a *Deed of Assignment*. The debtor, by voluntarily yielding up the whole of his property for the benefit of his creditors at large, may, at the

will of any one or more of them, be made bankrupt, or be forced into prison for debt; The end of this is, that the unfortunate debtor without means will, if he become bankrupt, have to bear the charges of making out his accounts, passing his examinations, and obtaining his certificate; and will, if sent to prison, have to pay the expenses of preparing and filing his petition and schedule, and procuring his discharge from the Court for relief of Insolvent Debtors.

"This *Deed of Assignment*, in order to become effective and useful either to debtors or creditors, must also be protected by the legislature in precisely the same manner as has already been suggested with regard to deeds of inspection and composition."

Mr. Healey next discusses the Law relating to Insolvent Debtors under the following heads:—

"1. *Of the Insolvent Debtor.*—The term 'Insolvent Debtor' has long been objected to, as being at once unnecessary and degrading. To remove this objection, the insolvent might well be distinguished by the more mild and equally efficacious term 'Debtor.'

"2. *Of the Insolvent Debtors' Act.*—The various Acts relative to insolvency and bankruptcy, being in the instances here set forth, and in many other respects, vastly dissimilar, ought without delay to be amended, so as strictly to resemble each other in at least all the penalties and advantages resulting from the two sets of law, in order that the scales of justice may in future balance more truly and equally with the insolvent debtor and the bankrupt than at the present time.

"The insolvent debtor, like the bankrupt, ought to be discharged from all his debts at once, and his future earnings should remain to himself; and he ought also to be entitled to participate liberally with his creditors in the distribution of his own property, as a fair reward for its guardianship and protection.

"The allowance to the insolvent debtor ought, in fact, to be precisely similar to that which is recommended to be granted in future to the certificated bankrupt.

"All the anomalies and defects here referred to, should be carefully collected from the various Acts, and made to accord with each other by accurate emendations.

"This duty, however, forms no part of the writer's task, his chief object being, not to point out mere minute inaccuracies, but to root up and disclose the great defective principles of the existing laws of debtor and creditor.

"3. *The Protection Acts.*—The result of these decisions has been again to set up the protection statutes, which were beginning to fall into disrepute, whilst the decision of the Common Pleas in *Toomer v. Gingell* was considered a governing authority.

"At the present, however, it may be said there is only the judgment of one court against that of another; but it seems that the recent

cases in the Exchequer were more fully argued and better considered than in the case of *Toomer v. Gingell*; and there is therefore little doubt that the decisions in the Exchequer are in accordance with the actual, as distinguishable from the presumed, intentions of the legislature, and may ultimately prevail.

"But while a single doubt exists on the point, that doubt ought to be set at rest at once and for ever by a declaratory clause in the new Act."

We next come to the author's views relating to the amendment of the Bankrupt Law, from which we make the following extracts:—

"1. *Of the Bankrupt.*—The degrading term 'bankrupt,' like that of 'insolvent debtor,' seems to require an alteration; for it has long been held in great distaste by all respectable traders whose misfortunes have unhappily acquired for them its appellation.

"To remedy this evil, and to extend the benefit of these laws beyond the mere trading class, let all persons now liable thereto as traders continue to be so, both on their own petition and by compulsion; and let all other persons of full age and competent understanding—whether traders or not, whose debts respectively shall amount to more than, say, 300*l.*—be also amenable to these laws, on their own petition.

"Discontinue the term 'bankrupt,' and let him in future be described by the equally apt word 'debtor' only.

"2. *Of the Fiat.*—Abolish the fiat, and in lieu thereof let a mandate be issued on petition, not to the Lord Chancellor, but to one of the Commissioners of the Court of Bankruptcy.

"Also abolish the fee of 10*l.* and 20*l.* payable in respect of the fiat, and all other fees whatever now payable in this court, and instead thereof let a reasonable per-centage be imposed on the dividend.

"3. *Of the Messenger.*—It is the prevailing opinion that the office of messenger might safely be abolished altogether, and that a person to act in his stead might properly be appointed under each fiat by the parties most interested in the matter, subject, of course, to the approval by the Commissioner. In this opinion the writer entirely concurs; but as it is apprehended that this worse than useless officer will still be retained, the following new terms of arrangement with him are submitted for consideration, viz.

"Let the messenger be paid for his services, not by fees, but by a fixed salary. Let him have, on his own appointment and under his control, a sufficient number of subordinate officers; and let these be also paid by salary, and be liable, on proof of negligence or other improper conduct, either by the official assignee or the messenger.

"Let the messenger give security to the court for his own fidelity, and for the integrity and general good conduct of his subordinates.

"And let the bankrupt, on the opening of the fiat and at the expense of his estate, have full power to appoint one, or, in case of need,

more persons of his own nomination to assist the messenger in his duties of preparing an inventory, and keeping possession of the property from that time till the choice of trade assignees, when the property and the inventory, duly verified by the persons making it, should be delivered up to the assignees to abide their further directions."

An alteration in the duties and emoluments of *official assignees* is no doubt needed. Mr. Healey makes the following suggestions:—

"Let the official assignees be paid for their services, not by a per-centage on the bankrupt's property, as at present, but by a fixed salary,—say 1,200*l.* a year; and let them have under their control a sufficient number of clerks to perform the duties of the office. Let the principal clerk be a person well skilled in the forms and legal hearings of bankrupts' accounts and balance sheets, and let his salary be 600*l.* a year. Let another efficient clerk of this class be appointed at a salary of 400*l.* a year. Let a proper number of subordinate clerks be also appointed, and paid by salaries, varying in proportion to the value of their services.

"Let the bankrupt assist the official assignee in collecting the outstanding debts; and let the bankrupt be rewarded for his trouble by a per-centage on the full amount of debt, which, through his assistance, shall be recovered to the estate.

"An official assignee should give ample security, as at present, for his own fidelity; and should superintend and be accountable for the integrity and general good conduct of all his clerks, who should, on proof of negligence, or other improper conduct, be liable to dismissal by the official assignee.

"Let the books of the official assignees be kept in the order and manner usually adopted by merchants; and let all moneys that come to the hands of the official assignees be paid into the Bank of England daily.

"Let the official assignees keep a separate book for each bankrupt's estate, to contain daily entries of all monies received and paid, together with the true date, name, and sum; and let this book be kept open at the office of each official assignee during two days in each week in office hours, for inspection by the creditors.

"And let each creditor, if required, produce to the official assignee, a registrar's certificate to the effect that his debt under the estate has been duly proved and filed on the proceedings; and let the registrar, at the time of each proof, make out such certificate accordingly, and deliver the same to each creditor without fee.

"An objection to the present class of official assignees is, that however profound they may be in mercantile matters, they are, many of them, altogether unskilled in the laws of debtor and creditor; and are therefore found to be incompetent, in case of need, to afford any legal assistance whatever, either to the

Court of which they daily form a part, or to its suitors.

"For this reason, it is suggested that, in order to facilitate the despatch of business and to strengthen the present legal intelligence of the Court, future vacancies in this department might be beneficially supplied by appointing, instead of the present class of official assignees, *solicitors* of not less than ten years' standing."

Then as to the *bankrupt's allowance*, Mr. Healey, along with many other persons, recommends some material alterations:—

"Let the allowance to the bankrupt be granted on a very liberal scale: for example, give to him in the first instance, as a matter of right, a reasonable allowance for the support of himself and family from the date of the fiat to the choice of trade assignees, and let the amount to be allowed be decided by the Commissioner. From the appointment of trade assignees till the day named for the bankrupt's certificate, let the amount be in the joint discretion of the Commissioner and the trade assignees. After certificate granted, let the debtor demand and receive from the official assignee a further allowance of at least 5*l.* per cent. on the gross amount collected from, or realized by, his estate, and an additional allowance of at least 5*l.* per cent. upon the amount divided.

"Power should be reserved to enable the trade assignees, with the concurrence of the bankrupt, to pay the first of these two several per-centages partly in money and partly in the value (to be agreed) of any of the debtor's stock or effects, which should be duly assigned to him for that purpose; but the last of these two per-centages should be paid only in money.

"These are the rewards which are now proposed to be bestowed on the *honest* debtor. While the *dishonest* or fraudulent debtor, instead of being so rewarded, will not, of course, obtain his certificate, and consequently will not be entitled to receive any allowance whatever beyond what may be granted to him for his maintainances up to the time when his certificate is refused. The uncertificated bankrupt will therefore pass into the world with an *indelible stain on his character*, and without any means, arising from his own estate, of obtaining fresh credit and support in trade.

"Power should be given to the Commissioners, in cases of *gross dishonesty* or fraud, not only to disallow the certificate and per-centage, but also to commit for trial any bankrupt who shall appear to him to have been guilty of an offence punishable by the statute. Production of the proceedings to be evidence of the bankruptcy and all other matters necessary to support the prosecution.

"Of the enormous expenses of the Court of Bankruptcy.—By a return lately published, by order of the House of Commons, of a list of salaries and fees taken at the various offices connected with the Bankruptcy Court, it appears that the sum total does not amount to less than 100,000*l.* a year.

"This vast amount, it should be recollected,

is all taken from the assets recovered in the variety of bankruptcies that occur during the year, and the dividend ultimately paid to the creditors on each estate is proportionably decreased.

"An abolition of one-half of the offices, and a total abolition of the fees—substituting a percentage on the dividend—is the *reform* that is really required, far more than mere trifling alterations relative to the manner in which the bankruptcy laws shall be carried on.

"But if this expensive machinery *must* be continued, let some of the *district* Courts be separated, and placed in positions more convenient than at present to the country suitors."

These suggestions are valuable, and we hope they will, for the most part, be adopted.

STATUS OF ATTORNEYS.

We have received a reply from "An Attorney" to the letters of "A paid Articled Clerk," at page 142, and "A. Z.," at page 143, *ante*; and intended to have laid it before our readers, with some remarks of our own, in the present number; but another correspondent, a solicitor in the country, doubts the truth of the assertion that the attorneys, as a class, are held in such low estimation as our first correspondent assumes. We, therefore, publish this last letter, and shall be glad of a further discussion of its contents, before we enter upon the controversy raised with the "Paid Articled Clerks."

To the Editor of the Legal Observer.

SIR,—Cordially agreeing with your correspondent, "An Attorney," in the opinion he entertains (No. for 9th inst.) of the pernicious influence which the practice of raising persons who have been but copying clerks to the grade of the solicitor must indubitably exercise, I cannot, nevertheless, think with him, that either a premium of 1,000 guineas or a forensic robe will, in the present state of society, cure the evil of which he complains—that evil being, if I rightly understand your correspondent, the want of consideration and respect in which, *as a class*, the attorneys are held in society. Without, however, stopping to prove why both money and costume must fail to command the desiderated position for the profession, I am rather disposed to doubt the truth of the assertion that, *as a class*, the attorneys are meanly estimated by the public.

I have had an experience of twenty years in town and country, and my observation teaches me that the estimate put upon each member of the profession, and his treatment at the hands of the public generally, are by no means calculated to do him injustice. It is, in my humble judgment, the individual, and not

the class, that comes under the censorship of society, and, in the main, society rarely errs. I am, of course, treating of the rule, and not of such exceptions as do occasionally occur when a vulgar or brainless, and perhaps hot-headed man, chooses to indulge in coarse jokes at the expense of the profession, and to stigmatize it by the epithets most ready at his tongue's end, or when a counsel, with less refinement of manners and, perhaps, of more humble extraction than the attorney behind him, conceives that the latter is a fair butt for insolence or ridicule, and peculiarly and professionally, as it were, the subject of his licence of tongue; and the exception does now and then exhibit itself when—"more in sorrow than in anger" he it said—the ermined judge himself causelessly snubs the attorney, and betrays a want of that good breeding and polish which the attorney in his intercourse with society may eminently possess; but we are not now to speak of exceptions. The rule I hold to be, that society judges well in general of the class, but has little mercy, and so much the better, upon delinquent individuals.

It would hardly be fair, perhaps, to rest this argument solely upon the acknowledged fact that, both in the metropolis and in the country, nine-tenths of the practitioners who enjoy large and lucrative practices are taken, not merely into the confidence, but into the friendship of the classes styled the upper classes in social rank. They are not unfrequently to be found mixing in their *salons*, received at their tables, and even forming family alliances at the present day, and the clergyman and the medical man are in this respect not a whit preferred before the attorney; but in the moral influence he may and often does exert, the well-established solicitor need yield to none, unless it be to the clergyman. In the metropolis, are not leading attorneys associated with persons of higher rank for the attainment of great public or political objects? are they not, many of them, enrolled on the committees for the amendment of the law? do they not furnish valuable evidence on matters within the scope of their professional and general knowledge to the Houses of Parliament? and, in the country, when is not their experience, enlightened views, and knowledge of mankind and of their rights and obligations, not made available if a public emergency require it? Every charity, every scientific and useful institution, every book-club, attests the value of the services or of the co-operation of the attorney in either founding, promoting, or supporting it.

But I will not be supposed to let my position—viz., that society judges well, or rather judges fairly of the class—depend upon the instance hitherto cited of the active and well-established attorney. Take another instance—that of a young man commencing practice with none of the advantages derived from long repute—with no adventitious help of money or family connexions. Let him have been well-educated, respectably articled, his conduct unimpeachable, his deportment, manners, dress,

and address those of one who, it can be seen at a glance, habitually shuns low company. Let him be well read in the law, conversant with those subjects which ought to engage the attention of a gentleman—and here I would mingle the intellectual and the recreative—the latter in moderation—literature and cricket—mathematics and music). Take, I say, a young man of this stamp, and whether it be in conference with clients, or at consultation with counsel, before a Judge or Master, as a witness; or, where he will rarely appear if he can help it, before a police or other of those lesser tribunals where personalities and scurrility seem to form the passport to business; in all or any of the the supposed cases my observation warrants me in asserting, that such a member of the profession, young though he be, if he have reasonable confidence in himself, will always meet with gentlemanly treatment from his equals and those who are superior in position, and will command respect, or at least extort, perhaps a sullen and unwilling deference from those who are inferior in every attribute which marks the well-bred and well-informed practitioner.

Let my professional brethren, therefore, when they complain of the unenviable position in which they stand, look to it well, whether some of them have not to thank themselves as the authors of the calamity they deplore, G. A. Southampton, 25th June, 1849.

RAILWAY ACCOUNTS' BILL.

TAXATION OF COSTS.

THE attention of our readers should be

called to the bill brought in by Lord Montague, of Brandon, “to provide for the better Auditing of the Accounts of Railway Companies.” The 18th clause of the bill provides, that all bills of costs incurred by railway companies for *legal or parliamentary* expenses shall be taxed by the proper officers; and the directors of any such company are *not to pay on account* more than *one-half* of the amount of any such bill of costs *until after it has been so taxed*.

The objection to this, as to all such restraints on legal expenses, is, that with those practitioners whose charges may need such compulsory enactments, they will be nugatory, for unscrupulous persons will readily find the means of evasion. The real effect will be to injure the client and annoy the respectable practitioner. Then it is important to know whether the payment of one-half of the costs on account, means payment of the solicitor's fees inclusive or exclusive of his *disbursements*. If inclusive, and the disbursements are large, the business will frequently be stopped. The words “except for the disbursements included in such bill of costs” ought to be added at the end of the clause.

But as the shareholders in railway companies have the power of calling for a taxation, if the directors should improperly allow the solicitor's bill, we can see no reason for incurring the expense of taxation in all cases.

RECENT DECISIONS IN THE SUPERIOR COURTS.

AND SHORT NOTES OF CASES.

Rolls' Court.

Morgan v. Morgan and others. May 25, 1849.

MASTER'S REPORT. — EXCEPTIONS AFTER CONFIRMATION.

Leave given, upon payment of costs of application, to except to Master's report after confirmation, where the Master had exceeded the directions of the decree; and the order for confirming such report was discharged.

ROBERT MORGAN, who died in Feb. 1835, by his will bearing date the 28th April, 1834, gave *inter alia* all his residuary personal estate, consisting partly of leaseholds and partly of a sum of long annuities, to Henry George Pulman and John Reeve, on trust, after paying his debts, funeral and testamentary expenses and legacies, to permit his wife to reside in his dwelling-house, and to occupy the lands belonging thereto during her life, and also to pay the rents of the remainder of his real estates and proceeds of his personal estates to his wife

for life; and at her death he directed the trustees to sell the real estates and divide the proceeds, and to transfer his residuary personal estate amongst all his children, except two. The testator's widow afterwards married Mr. Henry George Pulman.

This suit was instituted to administer the testator's will, and at the hearing the long annuities were directed to be sold, but nothing was said about the leaseholds. The widow was likewise declared to be entitled only to the interest of the proceeds of the sale of the long annuities, and a reference was directed to the Master to take the accounts of such of the personal estate as was not specifically bequeathed. The Master had considered the leaseholds as not specifically bequeathed, and as it appeared that the executors had permitted the widow to receive the rents thereof, he charged her and them with the difference in the amount of such rents, and the annual income which would have arisen therefrom if sold at the expiration of a year from the death

of the testator. No exceptions were taken to this report by either the widow or the executors, and the Master's report was accordingly confirmed, but the Court on further directions was of opinion that exceptions ought to have been taken to the report. This petition was therefore presented, and prayed that the order confirming the Master's report might be discharged, and the petitioners allowed to except to the report.

Turner and Greene in support of the petition; Roupell and Bird *contrà*; Lloyd, Glasse, and Briggs, for other parties.

The Master of the Rolls discharged the order confirming the Master's Report, and gave the petitioners leave, upon payment of the costs of this application, to except to the Master's report only as to the matters stated in the petition; and as to the non-allowance to the widow by the Master of certain sums paid for the maintenance of an infant, his lordship said, that a further petition must be presented for that purpose.

June 30.—*Foley v. Smith*—Stand over to next seal.

Vice-Chancellor of England.

Craddock v. Piper. June 9, 1849.

TRUSTEE.—SOLICITOR.—COSTS.

A Trustee's costs, acting as a solicitor in a suit, were directed to be taxed between solicitor and client, as ordered by a former decree in the suit, which had been acquiesced in by all parties. The Master, having only allowed the costs out of pocket, was directed to review the taxation, allowing as between solicitor and client.

THIS suit was instituted for the administration of the estate of Thomas Piper, and a decree was made in 1839, directing the Master to make the usual inquiries and take accounts, and to tax the costs of all parties—those of the trustees to be taxed as between solicitor and client. The four plaintiffs were executors and trustees, and one of them, Mr. Watson, was a solicitor, and being a connection of the family and residing near the estate, had acted as the plaintiff's solicitor in the cause, and also of the four infant defendants, who had since come of age, and who now appeared by a different solicitor. Another decree was made on further directions, directing the trustees to tax the trustees' costs as between solicitor and client, which costs were directed to be added to their former costs, which had been taxed under the former decree as between solicitor and client. The taxing master having only allowed the trustees their costs out of pocket, this petition was presented to refer it back to the Master to review his taxation and to allow the plaintiff's costs as between solicitor and client, as directed by the decree on further directions.

Stuart, Bethell, and Sidebottom, in support of the petition, said, the Master had allowed the plaintiffs their costs out of pocket only, on the

ground of Mr. Watson's being solicitor in the cause, and contended, that as the costs under the former decree had been taxed as between solicitor and client, the defendants were estopped from insisting on the trustees' being only allowed their costs out of pocket; citing *New v. Jones*, 9 Jarm. Convey. by Sweet, 732; *Robinson v. Pett*, 3 P. Wms. 248; *Moore v. Froude*, 3 Myl. & Cr. 45; *Fraser v. Palmer*, 4 Y. & C., Eq. Exch. 615; *York v. Brown*, 1 Coll. 260; *Carmichael v. Wilson*, 2 Moll. 537.

J. Parker and Wright, *contrà*, argued that they were not estopped either by the decree or what had taken place under it, and that a trustee acting as solicitor in relation to the affairs of his trusteeship was only entitled to his costs out of pocket, and could not claim any remuneration for his professional services, as a trustee had in his power by instituting proceedings unnecessarily to burden the trust estate, citing *Bainbridge v. Blair*, 8 Beav. 588.

The Vice-Chancellor said, that under the terms of the first decree the trustees' costs were directed to be taxed as between solicitor and client, and that decree had been acquiesced in by all parties. If a testator were to appoint his own solicitor his trustee, and to direct that he should pay himself as between solicitor and client for his trouble in the management of the trust matters, the trustee would clearly be entitled to pay himself as the testator directed. The proceedings taken since 1839 in this suit were of the same nature as the previous proceedings, and the words of the former decree directing the taxation as between solicitor and client, undoubtedly implied that the solicitor, though a trustee, should be allowed for his professional services. That decree having been acquiesced in, the same principle should be acted upon in the present case. It must, therefore, be referred back to the Master to review his taxation, and allow those items as between solicitor and client, which had been taxed off.

June 27, 28, 29.—*Blundell v. Gladstone*—Exceptions to Master's report that property was held in trust for a Roman Catholic charity, allowed.

—29.—*In re North Midland Railway Company*—Order for payment of costs by company under the 6 & 7 W. 4, c. 107, s. 52.

—29.—*In re Ravenscroft*—Judgment on effect of cancellation of part of a will.

—29, 30.—*Parkin v. Cape*—*Cur. ad. vult.*

July 2.—*Benyon v. Nettlefold*—Demurrer allowed.

—3.—*Lauder v. Weston*—Exceptions to Master's report allowed.

Vice-Chancellor Knight Bruce.

In re the Warwick and Worcester Railway Company. May 26, 1849.

WINDING-UP ACT OF 1848.

Held, that a railway company which was dissolved after the 7 & 8 Vict. c. 111, but before the 11 & 12 Vict. c. 45, is within

the operation of the latter act, and an order for winding up was made.

This petition was presented by a contributory for winding up the company. It appeared that the company had been dissolved, and had ceased to carry on business, and that their debts and liabilities amounted to more than 10,000*l*. It was urged against the petition that the company was not within the 11 & 12 Vict. c. 45, as it had been dissolved or ceased to trade between the period of the passing of the 7 & 8 Vict. c. 111, and the 11 & 12 Vict. c. 45, and was therefore excepted under section 1 of the Winding-up Act, 1848; and also that, as a reference had already been directed to the Master in the case of *Goodman v. De Beauvoir*, to take an account of the debts and liabilities of the company, the present petition was unnecessary.

Malins and *Roxburgh* in support of the petition; *Metcalf*, *Glasse*, *Southgate*, and *Dunne*, contra.

The Vice-Chancellor said, that the company was not exempted from the provisions of the 11 & 12 Vict. c. 45, on account of its dissolution having occurred between the time of the passing of that act and the 7 & 8 Vict. c. 111. It was not necessary to show, as a foundation for the exercise of the jurisdiction of the Court, that the available funds of the association were insufficient to meet its liability. The parties would not be burdened with the expense of a reference to the Master to ascertain the necessity or expediency of winding up the company, but, notwithstanding what had been done in the suit, the common order for winding up would be made,—the reference to be to Master Senior, who had acted in the other proceedings in the cause.

June 28.—*Cheshire v. London and North-western Railway Company*—Stand over.

— 28.—*Aaron v. Aaron*—Judgment on construction of will.

— 29.—*In re Metropolitan Railway Junction Company*—Order for winding up.

— 29.—*In re Oxford and Worcester Extension and Chester Junction Railway Company*—Order by Master directing solicitor to produce certain documents on which he claimed a lien for costs, discharged.

— 29.—*In re Great Western, Southern and Eastern Counties, or Ipswich and Southampton Railway Company*—Order for winding up.

July 2.—*Esparte Hunt*, *In re Burls, Johnson, respondent*—Order for execution of conveyance by assignee to equitable mortgagee, without costs.

— 2.—*Esparte Samuel and others*, *In re Lloyd*—Stand over.

Vice-Chancellor Wigram.

Robertson v. Southgate. Jan. 8, 9, 1849.

COSTS OF DEFENDANT DYING BEFORE TAXATION.

Where a defendant to a suit in which the plaintiffs were decreed to pay costs to all

the defendants, died before the costs were taxed: Held, that they could only be recovered in a suit revived for that purpose.

Quære, whether such a suit can be instituted since the 1 & 2 Vict. c. 110.

A DECREE had been made in this cause dismissing the bill, and the defendant's costs were directed to be paid by the plaintiffs. One of defendants had died before the decree was drawn up, but the registrar notwithstanding passed the order. The Taxing Master, however, refused to tax the costs of such deceased defendant, whereupon this motion was made at the instance of the executrix of the defendant, that the Taxing Master might be directed to proceed with the taxation of those costs.

The Solicitor-General and Hallett in support of the motion. The abatement was caused by the death of a party entitled to receive costs, and not by that of a party liable to pay them; and by the 1 & 2 Vict. c. 110, ss. 13, 18, 19, the costs directed to be paid under the decree would, by registration at the Common Pleas Office, become a specific charge on the land and other property of the debtor, but in this case, as the costs had not been taxed before the abatement occurred, there could be no bill of revivor. The provisions of the 1 & 2 Vict. c. 110, could not therefore be taken advantage of, but the Court might, as the act was a beneficial one, direct the costs to be taxed and thereby enable the executrix to register the decree.

Kenyon, *Parker*, and *Greene*, contra, contended, that as the suit had not been revived, the executrix was not a party to the suit, and could not therefore be heard. See *Andrews v. Lockwood*, 15 Sim. 153, 295; 2 Phill. 398; *Bowyer v. Beamish*, 8 Ir. Eq. Rep. 63.

The Vice-Chancellor said, that the costs could only be recovered in a suit revived for that purpose. His Honour declined to give any opinion as to the effect of the 1 & 2 Vict. c. 110, on the right of the executrix to revive the suit.

June 29.—*In re Bedford Charities*—Stand over to July 7.

— 30.—*In re Lancaster and Newcastle-on-Tyne Direct Railway Company*—Stand over.

— 27, 28, 30.—*East Lancashire Railway Company v. Hattersley*—Cur. ad. vult.

— 29, 30, July 2, 3.—*Attorney-General v. Murdock*—Part heard.

Queen's Bench.

(Before the Four Judges.)

Cooper v. Home. May 8, 1849.

WRIT OF SUMMONS.—AFFIDAVIT OF SERVICE.—TIME AND PLACE.

Rule absolute to set aside writ of summons and all subsequent proceedings upon the affidavit of the defendant that he had not been served with a copy of the writ or notices; the affidavit in reply merely stating that the deponent served the defendant personally with a copy of the writ of sum-

mons in or near Brompton, without any-
thing as to the time of the service.

A *rule nisi* had been obtained to set aside the writ of summons and all subsequent proceedings in this case. The affidavit upon which the *rule nisi* was granted was made by the defendant, and alleged that he had never been served with a copy of the writ of summons or any subsequent proceedings, and that the only intimation he had of the matter was from reading in a daily paper the report of the execution of a writ of inquiry before the sheriff in Red Lion Square.

Godson, Q. C., against the rule, read an affidavit of a party who stated that he served the defendant personally with the copy of the writ of summons in or near Brompton, and notices of the subsequent proceedings at the house where to his belief the defendant lived.

Skinner in support of the rule.

The Court said that the affidavit should have stated the time and place of the service of the writ on the defendant, and made the rule absolute to set aside the writ and all the subsequent proceedings.

Queen's Bench Practice Court.

(Coram Wightman, J.)

Regina v. North Western Railway Company.
June 8, 1849.

RAILWAY COMPANY.—RETURN TO MAN-
DAMUS.—PRACTICE.

Where a railway company had neglected to make a return to a mandamus commanding them to summon a jury to assess compensation, a rule was granted calling on them to make a return.

A MANDAMUS had issued against the above company, commanding them to issue their warrant to the sheriff, requiring him to summon a jury to determine the compensation under the 8 Vict. c. 18, s. 39. The rule had been served upon the secretary under section 134, which enacts, that "any summons or notice, or any writ or other proceeding at law or in equity, requiring to be served upon the promoters of the undertaking, may be served by the same being left at or transmitted through the post, directed to the principal office of the promoters of the undertaking, or one of the principal offices where there shall be more than one, or being given or transmitted through the post directed to the secretary, or in case there be no secretary, to the solicitor of the said promoters."

The company having made no return to the mandamus, *Hugh Hill* now applied for a rule calling on them to make a return.

The Court granted the rule.

Court of Common Pleas.

Smith v. Thompson. June 9, 1849.

MONEY TRANSMITTED FOR BUSINESS
PURPOSES.

Held, that the meaning of the expression "business purposes," is a letter containing

a remittance of 100l. for the same, was rightly left to the jury, as also, whether the plaintiff had wilfully disobeyed his instructions in appropriating a sum of 30l. to the payment of his salary as clerk to defendant. And a rule for new trial, was discharged.

Held, also, that the amount of damages was in the discretion of the jury, and that as the judge who presided was satisfied with the verdict and the amount of damages, the Court would not interfere with the finding of the jury.

THIS was an action of *assumpsit* on an agreement by which it was agreed that the defendant should employ the plaintiff as custom-house and shipping agent at Southampton, for the period of six months, at a salary of 120l. a year, and also 50 per cent. on the gross profits of business to be newly introduced by him; and the defendant also agreed, at the expiration of the six months, to engage him for a further period of two years, and to increase his salary to 150l. for the first year, and 160l. for the 2nd year. The plaintiff entered into the defendant's service in September, 1846, but was discharged in August, 1847, whereupon he brought this action for wrongfully dismissing him from his employment before the period of engagement had expired. The defendant pleaded *non assumpsit* and a justification, on the ground that the plaintiff had wrongfully and improperly appropriated moneys remitted to him for "business purposes," to the payment of his salary; to which the plaintiff replied *de injuria*. It appeared at the trial that the plaintiff had repeatedly applied for payment of a portion of his salary which was then due, and that, not receiving the same, he had appropriated to the payment thereof 30l., part of a sum of 100l. which had been remitted to him for "business purposes." Correspondence and other evidence were given at the trial to show that the plaintiff could not have understood this expression to include the payment of his salary. Mr. Justice Williams, who presided at the trial, left it to the jury to say what was meant by business purposes, and directed them, that if the plaintiff had acted wrongfully and wilfully and contrary to what he reasonably believed were the instructions in the letter, they would find for the defendant, and if otherwise, for the plaintiff. A verdict having been found for the plaintiff, damages 185l. 12s. 6d., a *rule nisi* had been obtained for a new trial on the grounds of misdirection, that the verdict was against evidence, and the damages excessive.

Byles, S. L., and Edwin Jones, against the rule; *Murphy, S. L., and Pitt Taylor*, in support, said, that the misdirection consisted first in the learned judge's not deciding the effect and meaning of the letter in point of law, instead of leaving its construction to the determination of the jury; and 2ndly, in the statement of the question of disobedience to the instructions contained therein.

The Court said, that the expression "for business purposes" was ambiguous, and that the election on the evidence as to whether it would warrant the payment of clerk's wages or not, was therefore properly left to the jury, and it was not for the judge to construe its effect. The question, whether the plaintiff had acted knowingly contrary to his instructions, was that on which the parties had rested their rights at the trial, and was therefore rightly left to the jury to decide. As the judge who tried the cause was satisfied with the verdict given on the evidence adduced at the trial, the verdict must be considered consistent with the evidence, of which, in such a case, the jury were the best judges; and also the amount of the damages was in the discretion of the jury. The rule for a new trial must therefore be discharged.

Exchequer.

Turner v. Deane. May 12, 1849.

ATTORNEY'S LIEN.—PARTNERSHIP DEBT.

Held, that the lien of an attorney for business done for a firm does not attach to a deed coming into his hands in the transaction of private business for a member of that firm.

THIS action was brought by the plaintiffs, who were the official assignees of the private estate of Mr. Higginson, of the firm of Barton, Irlam, and Higginson of Liverpool, as well as of the firm, to recover from the defendant, a solicitor, a sum of money paid by the plaintiffs, under protest, in discharge of his bill against the firm, in order to obtain possession of a certain deed over which he claimed a lien. The defendant had been employed by the firm, and also by Mr. Higginson as his private solicitor, and in the latter capacity a deed of Mr. Higginson had come into his hands. The defendant having set up a lien on the deed for the debt of the firm, the plaintiffs paid the bill under protest, brought an action to recover the same, and recovered a verdict. A rule nisi having been obtained to enter a nonsuit in lieu of such verdict,

Martin and Crompton now showed cause against the rule; Watson and Henderson in support.

The Court held, that the lien set up by the defendant could not be supported. There was no precedent whatever for the proposition that an attorney had a general lien on the property of the members of a firm for business transacted for one of them, and the rule must, therefore, be discharged.

Nisi Prius.

(Coram Parke, B.)

Hunt v. St. Aubyn. June 6, 1849.

STATUTE OF LIMITATION.—ACTION FOR BILL OF COSTS.

The plaintiff, a solicitor, was employed by defendant to obtain a loan of money, but was

unsuccessful. The defendant soon after left England and resided some years abroad, and on his return the plaintiff applied for the amount of his costs, and not being paid, brought an action, but was non-suited on the plea of the Statute of Limitations. The defendant afterwards wanting money again applied to the plaintiff, who undertook to procure the sum on an acknowledgment of the debt, costs of action, and interest to be deducted out of the money so obtained. The attempt was again unsuccessful, and an action was brought under the agreement. Held, that the Statute of Limitations did not apply to the costs of action and interest thereon; and the plaintiff obtained a verdict.

THIS action was brought by Mr. Hunt, an attorney practising at Plymouth, against the Rev. William John St. Aubyn, rector of Stoke Damerel, near Plymouth, to recover the sum of 66*l.* 4*s.* 6*d.*, the amount of his bill for professional services rendered, for money paid to the defendant's use, and on an account stated. It appeared that in 1833, the defendant, being in embarrassed circumstances, applied to the plaintiff to obtain a loan upon a mortgage of the tithes of the parish. The plaintiff accordingly endeavoured to raise the money but was unsuccessful, and the negotiation was consequently abandoned. The plaintiff's bill of costs amounted to 27*l.* 19*s.* 5*d.* for his services. Soon afterwards the defendant left England and remained abroad until 1842, when the plaintiff being unable to procure the payment of his costs, brought an action for the recovery thereof. The plaintiff however was nonsuited upon the plea of the Statute of Limitations. The defendant having again, in 1847, occasion to raise money, applied to the plaintiff to procure a loan, which the plaintiff said he would endeavour to obtain, upon the defendant signing an acknowledgment of the former debt, and promising to pay the same together with the costs of the action and interest on the original bill of costs. The defendant thereupon signed the acknowledgment upon the understanding that the plaintiff should obtain a loan of 120*l.*, from which the debt was to be deducted. The loan, however, was never obtained; and the defendant having therefore refused to pay the amount claimed under the agreement, the present action was brought, to which the defendant pleaded *inter alia* the Statute of Limitations.

Crowder and Montague Smith for the plaintiff; Slade for the defendant.

The Court said, that the plea of the Statute of Limitations could not be sustained in respect to the expenses of the action brought to recover the amount of the bill of costs and the interest thereon, but left it to the jury to decide whether the agreement was a conditional undertaking to recognize the former claim, but that at all events the plaintiff could not recover the amount he charged as agent's fees nor the interest thereupon. The jury found for the plaintiff, damages 43*l.* 2*s.* 6*d.*

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, JULY 14, 1849.  
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BUSINESS OF THE COURTS.

STATE AND PROSPECTS OF THE PROFESSION.—ILLNESS OF THE CHANCELLOR.

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The legal year, which may be said to terminate when the Long Vacation commences, is drawing fast to a close. The Equity Courts are not expected to sit beyond the first week of August, and the Sittings of the Common Law Courts, both in Banco and at Nisi Prius, have already come to a conclusion.

During the year that has past, some individual members of the profession have, no doubt, advanced—some have retrograded—many have retired or been removed from the struggle—but, on the whole, it has been to the profession at large a period of unquestionable depression, though its members, as a body, have too much vitality, energy, and elasticity, to succumb to a reverse which we confidently believe will be but of temporary duration.

Many circumstances have, no doubt, combined to cause a sensible diminution of the usual opportunities for active and profitable exertion; but the stagnation and embarrassment occasioned by the panic succeeding the railway mania, and the subsequently disturbed state of the Continent, would of themselves go far to explain and account for the result. Whatever superficial observers may say, the Lawyer prospers only in seasons of general prosperity. When the agricultural, the trading, or the commercial community suffers, his interests are sympathetically and invariably affected, and if the storm does not reach him immediately, its visit is not the less certain, nor its operation the less severe.

It would be in vain to deny, that the business of the Common Law Courts has also been materially abridged by the operation

of the County Courts' Act. A reference to the records of the Courts for Easter and Trinity Terms, 1849, will show that the number of interlocutory applications in those Terms, as compared with the corresponding Terms of 1847, fell short in the proportion of fifty per cent., or one-half. We shall be agreeably disappointed if the Cause Lists of the several Circuits, which have just now commenced, do not furnish a similar result. The Spring Circuits, as compared with former years, were confessedly bad—and the Summer Circuits are expected to be worse. If the loss of profit to the legal practitioner was attended by any corresponding advantage or benefit to the public, it may be freely admitted that, however inconveniently it may press on individuals, there would be no legitimate ground for complaint. There is abundant reason; however, to anticipate that the practical operation of the new system will be, not to enable parties to recover debts, or obtain redress for injuries, at a reduced expense; but to induce them to forego their claims, and abandon all idea of obtaining redress through the instrumentality of the law. It already begins to be manifest to those who have the best means of forming an opinion on the matter, that the inevitable effect of the experiment to render the trading classes independent of professional assistance—if persevered in—will be, not to improve or facilitate the administration of justice in any of its branches, but to obstruct and paralyse it in those cases where the interests of the most numerous and the most helpless classes are peculiarly and extensively involved.

Amongst the circumstances which have contributed to create the dulness and inactivity, apparent for some time past in legal circles, the protracted and continued illness of the Lord Chancellor has certainly

not been without its influence. Those selected to discharge the functions of that high and important office are, of course, in no respect exempt from the visitations with which Providence is pleased to afflict—perhaps in tolerably equal proportions—the most obscure as well as the most elevated, and, apart from all considerations of delicacy or feeling towards the individual, nothing could be more prejudicial to the public interest than that the occurrence of occasional or temporary illness should necessarily lead to a total deprivation of services, the value of which are often not adequately appreciated until they have ceased to be available. Still, we are at a loss to conceive how it could have entered into the mind of any man acquainted with public business—and especially into the mind of one having the opportunities Lord Brougham has had of an acquaintance with the duties and responsibilities of a Lord Chancellor—to state, as his lordship is reported to have done, that the absence of the Chancellor for three months was attended with no inconvenience whatever!! Can it be that Lord Brougham, having relinquished the idea of again taking his seat on the woolsack, now desires to impress on the public that the office of Chancellor, however venerable from age, is a useless dignity which ought to be abolished. If his proposition be admitted without reservation, how is it possible to escape from this conclusion? If the absence of a Lord Chancellor for three months, during what has usually been the busiest season of the year, and immediately preceding the Long Vacation, produces no inconvenience political or judicial,—wherefore should any inconvenience result if there were a suspension of the duties belonging to the office for six or twelve months? Why have a Chancellor at all? Perhaps, however, Lord Brougham, who does not always seek to attain an object by the ordinary route, ventured on this surprising revelation in the hope and with the expectation that his statement might be contradicted, as indeed, it was in the most unhesitating and explicit terms, by both Lord Langdale and Lord Campbell.

As the matter has been discussed, we may be excused for mentioning that some instances have been communicated to us where very serious inconvenience has arisen from the impossibility of obtaining the Chancellor's authority in reference to certain proceedings required in lunatic cases; and that it seems to be very generally felt throughout all branches of the profession that, unless Lord Cottenham's health was

speedily restored, so as to enable him to resume the exercise of his judicial functions—which the most recent accounts enable us to state is all but certain—the government must have issued a commission authorised temporarily to exercise the judicial power at present vested in the keeper of the Great Seal.

COUNTY COURTS' AMENDMENT BILL.

THE Bill introduced by the Attorney-General, the leading provisions of which were printed in our last number, has since gone through Committee in the House of Commons and has been considerably altered, but does not appear to be much improved. The substantial "amendments," the omission of which we then noticed, still continue to be overlooked, and the new clauses introduced—eight in number—relate, for the most part, to details, which our readers will probably consider as comparatively unimportant.

Before proceeding to notice the additional clauses added to the Bill, we must direct attention to what we consider an extremely objectionable and uncalled for interference with the privileges of the largest branch of the profession. Most of our readers are aware, that the Court of Queen's Bench solemnly decided,* that the County Courts' Act, (9 & 10 Vict. c. 95,) did *not* take away the privilege of an attorney plaintiff, and subject him to the risk of costs for suing in a Superior Court. That decision was adopted and sanctioned by the judgment of the Court of Exchequer in a subsequent case.^b The decision in both cases proceeded upon the obvious principle, that the legislature could not have intended to take away the privilege of attorneys to sue in the Superior Courts, or else such intention would have been expressed in the statute. The bill now before us contains a provision which it is impossible to doubt is intended to overrule the decisions of the Courts of Queen's Bench and Exchequer, in the cases cited, and to compel attorneys to submit their claims to the tender mercies of the judges of the County Courts. To the section printed in our last (*ante*, p. 177.) declaring that plaintiffs recovering in the Superior Courts (or any Inferior Court other than the County Court) less than 20*l.* in actions of contract, or less than 5*l.* in actions of tort, shall have no costs, the words are now added—"Nor shall any such plaintiff be

^a In *Lewis v. Hance*, 5 Dowl. & L., p. 641.

^b *Jones v. Brown*, 5 Dowl. & L. p. 716.

entitled to costs by reason of any privilege as attorney or officer of such Court, or otherwise." Considering the peculiar and oppressive burthens to which attorneys are subjected, it would not have been unreasonable to expect that the option of bringing their own suits in the Courts in which they practise might still have been continued to them, more especially as the preservation of such a privilege could not injuriously affect the interest of any other class of the community.

Amongst the new clauses introduced in the bill, there is one (marked A.) which provides, that where the debtor's prison is crowded, or situated at an inconvenient distance, the Secretary of State may order any house of correction or common gaol, in which debtors have not been heretofore confined, to be used as a prison under the County Courts' Act, and that persons committed to such prisons shall be treated "as nearly as may be," in like manner as if committed to a gaol in which debtors are usually confined, notwithstanding the regulations previously in force in such house of correction or gaol.

The clauses, marked B. and C. respectively, would seem to indicate that the judges and clerks of the County Courts have not the unqualified confidence of the government. By the first of these clauses, it is proposed to repeal the 41st section of the 9 & 10 Vict., which directs the clerks of the County Courts to pay over to the treasurer the monies in his hands quarterly or oftener by order of the Court; and substitutes a provision, that the clerk shall pay over the monies remaining in his hands as often as directed by the Commissioners of the Treasury. And the following clause repeals section 55 of the 9 & 10 Vict., which provides that the County Court clerk shall make the necessary contracts or otherwise provide for the necessary expenses incident to holding the Court, under the superintendence and sanction of the judge, and proposes to enact, in lieu thereof, that the Commissioners of the Treasury shall provide for such expenses "by the agency of the officers of the Court, or otherwise as to them shall seem fit."

The next clause (marked D.) provides for payment out of "the general fund," of the expenses incurred under the 10 & 11 Vict. c. 102, and declares, that the surplus of the general fund in one Court may be applied to the expenses of another Court where such fund is deficient, under the directions of the Commissioners of the Treasury.

Clause E. supersedes the necessity of employing brokers to act under the bailiffs of the County Courts, by providing, that the judge, under his hand, may authorise any bailiff to act as broker or appraiser for the purpose of selling or valuing goods taken in execution under the act, and the bailiffs so authorised are to be entitled, without further license, to perform the duties and receive the poundage which sworn brokers and appraisers are now entitled to perform and receive.

Clause F. simply proposes to repeal the 7th section of the 9 & 10 Vict., which provided that a month's notice should be given in the *Gazette* of an intention to consider the propriety of making an Order in Council under the act, a neglect of which provision, it may be remembered, created some embarrassment when the act was first about to be brought into operation by the establishment of Courts.

Clause G. empowers the Lord Chancellor to authorise five of the judges of the County Courts, to make general rules and orders concerning the practice and proceedings in those Courts, such rules and orders to be approved by three Judges of the Superior Courts, and then laid before parliament.

The only other change introduced by the Committee, is the striking out of the compensation clause, (printed *ante*, p. 179,) and substituting one of a totally different character. The clause now introduced is as follows:—

"That every person who is legally entitled to any franchise or office in any of the Courts abolished by this Act shall be entitled to make a claim for compensation to the Commissioners of her Majesty's Treasury within six calendar months after the passing of this act, and it shall be lawful for the said Commissioners, in such manner as they shall think fit, to inquire what was the nature of the office, and what was the tenure thereof, and what were the lawful fees and emoluments in respect of which such compensation should be allowed; but any increase of such fees or emoluments which shall have happened after the passing of the said act of the tenth year of her Majesty shall not be taken into account in estimating the amount of such compensation; and the Commissioners in each case shall award such gross or yearly sum, and for such time as they shall think just, to be awarded, upon consideration of the special circumstances of each case; and all such compensations shall be paid out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland: Provided always, that if any person holding any office in any of the said Courts shall be appointed after the passing of this act to any public office or employment, the payment of the compensation

awarded to him under this act, so long as he shall continue to receive the salary or emoluments of such office or employment, shall be suspended, if the amount of such salary or emoluments be greater than the amount of such compensation, or, if not, shall be diminished by the amount of such salary or emoluments."

Instead of fixing the amount of compensation by the act, as originally proposed, it is now suggested that the claimants are to be compensated at the discretion of the Commissioners of the Treasury, who may award such gross or yearly sum as they think just; with this qualification, however, that in estimating the compensation they are not to take into account any increase of fees or emoluments happening after the passing of the 9 & 10 Vict. The proviso, that the persons compensated are to cease to receive the amount of compensation, if hereafter appointed to any public office or employment, although usual and perfectly reasonable in ordinary cases, where compensation is given to public servants, is not just nor fairly applicable as regards persons who have purchased and paid the full value for their offices, like many of the officers of the Palace Court. Although the Committee may shift from their own shoulders, by the course now proposed, the responsibility of fixing the amount of compensation to which the several officers having a freehold in their offices in the abolished Courts are entitled, it is quite clear that the mode originally proposed,—namely, to fix the amount of compensation in each case by act of parliament,—was the safe and constitutional course, and that least liable to the imputation of favouritism and jobbing on the one hand, or injustice and illiberality on the other.

Enough has already occurred in the progress of this measure through parliament, to justify us in suggesting, that the changes effected or proposed in future stages should be carefully watched.

LAW OF ATTORNEYS.

ALLOWANCE TO TRUSTEE-SOLICITOR, OF COSTS AS BETWEEN SOLICITOR AND CLIENT.

THE allowance of costs to a trustee who acted as the solicitor in a cause has been recently mooted in the case of *Craddock v. Piper*, before the Vice-Chancellor of England (*ante*, p. 193). In this case, however, the order to the Taxing Master to review his taxation, and allow certain items as between solicitor and client, which had been

taxed off, appears to have proceeded on the ground that the former decree, by which the trustee's costs were directed to be taxed as between solicitor and client, had been acquiesced in by all parties. As it was understood that this decision will be appealed from, it will, perhaps, be acceptable to our readers to lay before them the various cases bearing upon this very important subject, viz., the allowance to a trustee, acting as a solicitor, of costs as between solicitor and client.

In *Robinson v. Pett*, 3 P. Wms. 248, (1734,) Talbot, L. C., upon appeal from *Jekyll*, M. R., said, "It is an established rule, that a trustee, executor or administrator shall have no allowance for his care or trouble; the reason of which seems to be, for that on these pretences, if allowed, the trust estate might be loaded, and rendered of little value. Besides, the great difficulty there might be in settling and adjusting the quantum of such allowance, especially as one man's time may be more valuable than that of another; and there can be no hardship in this respect upon any trustee, who may chuse whether he will accept the trust or not."

In *New v. Jones*, 9 Jarm. Convey., by Sweet, p. 732, *Lyndhurst*, L. C., held, that if a trustee, who was a solicitor, acted as a solicitor, he was not entitled to charge for his labour, but merely for his costs out of pocket.

So in *Moore v. Frowd*, 3 Myl. & Cr. 45, (1835—7,) before *Cottenham*, first as M. R., and afterwards by consent when L. C., it was held, that a trustee who is a solicitor, is entitled to be repaid such costs, charges, and expenses only as he has properly paid out of pocket; and it makes no difference in this respect, that the instrument creating the trust may have directed that the trust monies should be applied (*inter alia*) in payment of all expenses, disbursements, and charges, to be incurred, sustained, or borne by the trustee, in professional business, journeys, or otherwise; and that the trustee might retain all reasonable costs, charges, and expenses which he might sustain or be put unto, such costs, charges, and expenses to be reckoned, stated, and paid, as between attorney and client.

There are, however, some exceptions, for in *Fraser v. Palmer*, 4 Y. & C., Eq. Exch. 515, (1841,) where the trustee of the separate property of a married woman acted as her attorney in three several suits, instituted in relation to the trust property. In the first of these suits he was not a party, in the others he was: *Alderson*, B.,

said, "That in the first suit he ought to be allowed his costs as between attorney and client, and that in the two other suits he ought to be neither a sufferer nor a gainer."

So in *Bainbridge v. Blair*, 8 Beav. 588, (1845,) it was held by the present Master of the Rolls, that a trustee acting as solicitor in the trust matters is merely entitled to costs out of pocket; but the rule is not inflexible, and compensation may, in special cases, be made him, under the authority of the Court, by a fixed allowance, but not by allowing him to make the usual professional charges.

And in *York v. Brown*, 1 Coll. 260, (1844,) the Vice-Chancellor Knight Bruce said, that "where a solicitor, who is a trustee, is a defendant as a trustee, and is held to be entitled to his costs, the course of the Court is to direct those costs to be taxed as between solicitor and client, as in an ordinary case."

Again in *Carmichael v. Wilson*, 2 Moll. 537, (1825,) *Manners*, Lord Chancellor for Ireland, said, "I have consulted with Lord Eldon on the subject, and he agrees with me, that where an attorney is an executor, and carries on or defends suits relating to the assets, he is to be strictly watched, but if he acts fairly in them, he is to be paid like any other attorney."

In *Todd v. Wilson*, 9 Beav. 486, (1846,) on a settlement of accounts between a *cestui que trust* and trustee, (a solicitor,) the latter charged for professional services in the trust. A release was executed, but the *cestui que trust* not having had any independent professional assistance on the occasion, the Court relieved him from the professional charges, beyond the costs out of pocket. *Langdale, M. R.*, said, (page 488,) "the rule of the Court on the subject is perfectly well known, that when a trustee is a solicitor and employs himself in matters relating to the trust, he is only entitled to be paid his disbursements or money out of pocket, and he is entitled to nothing for his time or professional trouble."

But in *Staines v. Parker*, 9 Beav. 389, (1846,) the *cestui que trustent* were assisted by an independent solicitor, who pursued the bills of costs and settled and attested the release, it was held, under the circumstances, that the trustee was entitled to the benefit of the release. *Langdale, M. R.*, said, (p. 389,) "the safety of the public has been justly thought to require the rule now clearly established, that, although a trustee, being a solicitor, may appoint another solicitor to execute the pro-

fessional business relating to the trust, yet, if he does it himself, he shall not be allowed to charge for his professional services. This may sometimes occasion a hardship, but the rule has been established for the benefit of *cestui que trustent*, because it is thought unsafe to sanction any such allowance, and thereby tempt the solicitor to make unnecessary business for his own profit."

AUDIT OF RAILWAY ACCOUNTS' BILL.

REASONS AGAINST THE 18TH CLAUSE.

THE 18th clause provides that "*all bills of costs incurred by any railway company for legal or parliamentary expenses, shall, before the same are finally paid, be taxed by the proper officers;*" and that "*it shall not be lawful for the directors of any such company to pay, on account, more than one-half of the amount of any such bill of costs, until after it shall have been so taxed.*"

This clause is unnecessary,

Because under the 6 & 7 Vict. c. 73, s. 37, all bills of solicitors, including the legal and parliamentary costs, referred to in the clause, are liable to taxation, not only by the directors of companies, but also by the shareholders, if the directors do not tax them and the shareholders think fit to do so, and whether the bills have been paid without taxation or not, (s. 38). By this act a tribunal was established for the taxation of parliamentary and conveyancing costs, which previously were not liable to taxation.

It is invidious and unjust towards Solicitors,

Because the Bill does not compel the taxation of the charges of engineers, architects, surveyors, or other professional persons employed by railway companies, nor does it attempt to restrain the extent of payments on account of such charges, nor to regulate the payments to contractors for railway works. All those parties are allowed to make their own charges, which in case of dispute can be ascertained only before a jury, whilst by the existing law the charges of solicitors can be immediately referred to the proper officer for taxation, and if more than a certain proportion be disallowed, the attorney or solicitor is liable to the costs of taxation.

It is contrary to public policy,

Because it is an attempt to interfere with the exercise of the discretion of railway companies in the payment of the agents employed by them.

It is injurious to Railway Companies,

Because it compels them to incur the expense of taxation, which is considerable, although the Directors and Shareholders are satisfied that the charges are correct, and are desirous to avoid that expense; and it prevents the Directors of Railway Companies from advancing to their solicitors the sums which must necessarily be disbursed for fees in both Houses of Parliament, fees to counsel, expenses of witnesses and agents, stamp duties on purchases of land, and other necessary expenses, which form a very large proportion of the bills of attorneys and solicitors incurred by Railway Companies, and which generally are required to be advanced before any bills can be delivered. If these advances are to be made by the solicitors and not by the companies (which will be the effect of this clause in the proposed Bill), the business of companies will be delayed, or at least must be transacted at greater expense, by the necessity of remunerating the solicitors for the outlay which this provision will compel them to make.

COUNTY COURT PRACTICE.

JURISDICTION.—ATTORNEY PRACTISING IN HIS OWN DISTRICT.

To the Editor of the Legal Observer.

SIR,—On the 7th February, 1849, a debtor was induced by an attorney to execute an assignment of his entire property to three men to whom he was indebted, upon trust, to pay themselves in full, and then to divide whatever surplus might remain among the other creditors. This done, the attorney, on the 22nd of the same month, wrote to some clients of mine, offering them 4s. in the pound upon their claim; they, considering that the above-mentioned assignment was a fraud upon the creditors at large, refused to accept the offered dividend.

On the 24th May, 1849, the insolvent having thus divested himself of all his property for the exclusive benefit of this fortunate triumvirate, (one of whom, by the way, is the father, and the other the brother of the attorney who drew the deed in question,) petitioned the County Court of ——— for a discharge from his liabilities, stating that his debts amounted to 133*l.* 8*s.* 1*d.*, and that the sum of 11*l.* 5*s.* 3*d.* constituted his entire available assets.

On the hearing at ———, on the 26th ult., I attended, and while detailing the above facts, and expressing, not I hope with undue severity, yet with firmness certainly, my opinion of the entire transaction, I was interrupted by an intimation from the presiding judge, that the attorney in question was his friend, his clerk, and to crown all, as respectable a practitioner

as any man in ——— ton. I was, sir, a little startled I confess, that I had inadvertently assailed an attorney of such high connexions and exalted character. I persevered, however, and, with some difficulty, placed my gentleman in the witness-box, where, after declining for some time to give evidence until his expenses were paid, and absolutely refusing to produce the deed of assignment, he eventually, at the request of his learned friend the judge, condescended to be sworn, and admitted that the statement above detailed was true. I now thought to cry "Eureka," but vain are the hopes of mortals!—unluckily for me, the Court could neither see impropriety in the attorney's conduct, discover any grounds for refusing the petition of the insolvent, nor compel the production of the assignment. My applications were in fact refused, but as the matter comes on for a re-hearing on the 31st, perhaps some of your correspondents will, in the interim, inform me—

1st, Whether the County Court Act enables the learned judge to afford any, and if any, what relief to my defrauded clients?

2ndly, Does it permit an attorney to carry on business in the district within which he acts as a subordinate judicial functionary?

LEGALIS.

SOCIETY FOR PROMOTING THE AMENDMENT OF THE LAW.

THE SIXTH ANNUAL REPORT OF THE COUNCIL.

IT is now the duty of the Council to present their Sixth Report on the state and prospects of the Society.

The real power and success of an institution of this nature must be looked for in the spread of the opinions and doctrines which it avows, and the influence which it exercises, not only among its own members, but with the Legislature and other public bodies, and in society in general. Judged by this test, the Council may with truth congratulate the members and the public at large on the important station which the Society for the Amendment of the Law now holds. It may safely be asserted that at no former period of our history was the desire to amend the law so universal, and the duty to endeavour to amend it as well on the part of the state as of individuals so fully admitted. But if this general feeling did not take some specific direction, it would be of little use; and a brief examination will show that it is precisely in those portions of the subject to which the Society has chiefly devoted its labours that most progress has been made in the past year.

The Reform in the Court of Chancery, and the Free Transfer of Real Property, are the two great points to which the Society has directed its attention, and as to which it has spared no pains, by means of its committees, not only to propose specific plans of amendment, but to show how cumbrous and expensive are the pre-

sent procedures connected with this Court and with the transfer of land.

The Council have the satisfaction of observing that the efforts of the Society have not been without fruit; and it is in this present session of Parliament in which this has been most apparent. The Court of Chancery has, in the sister kingdom of Ireland, been admitted almost universally to be incompetent to deal satisfactorily with one important branch of its business—incumbered estates; and to this extent it has been practically superseded by a bill which has passed the House of Commons, and has been read a second time in the House of Lords, and referred to a select committee. All parties have demanded a machinery less expensive and complicated, and adapted to meet the wants of the parties without absorbing the property in dispute. This must be taken as a significant warning not only to this Court in Ireland, so far as the remaining branches of its jurisdiction are concerned, but the sister institution in this country. It is, indeed, so far satisfactory to know, that some great alteration in the procedure of the Court of Chancery is now universally demanded by all branches of the profession, and more especially by the solicitors, as absolutely necessary for conducting the business of their clients effectually and satisfactorily.

The important object for which this new tribunal is to be established in Ireland has been one which the Society has also endeavoured to promote by every means in its power,—the free transfer of land. The Council have seen with no little satisfaction, that the principles which have been laid down in the Reports of their Committee on the Law of Property have made great progress. Not only has their truth been universally admitted, but also the great benefit likely to result from their being acted on in practice, in raising the value of land, and benefiting all classes of the community. The Council need only notice as proof of this, the reception which the bill to facilitate the transfer of land (which proposes the establishment of a general register of titles) has met with in the House of Commons in the present Session of Parliament. Without any particular reference to the details of this measure, it is only necessary to observe, that all former bills having this object have been thrown out by large majorities; while the principle of this Bill has at length met with general assent, to which your Council are glad to perceive several respectable Provincial Societies, composed exclusively of attorneys are not exceptions. If this expression of opinion be contrasted with that manifested when the General Register Bill was last before Parliament, it will be admitted that there is a remarkable change of opinion with respect to registration, more especially among the landed gentry, who are chiefly interested in the question. In the same spirit several other bills, all having for their object the free transfer of land, as the Bill for the Compulsory Emfranchisement of Copyholds, and the Bill for dealing with Renewable Leaseholds in Ireland (among

others), have been well received in both Houses of Parliament, who have affirmed this principle by large majorities. Indeed, it may be truly said that there was never a parliament better disposed than the present to grant sound and well-advised amendments of the Law.

The Council do not wish to claim for the Society the entire merit of this improved feeling; but, considering that for the last five years its labours have been principally devoted to diffusing sound opinions on these subjects,—that these opinions have not only been largely circulated by its own publications, but generally by means of the press throughout the country,—and that no opportunity has been lost of promoting in Parliament bills and inquiries founded on its reports, the Council, under all these circumstances, think it is only necessary to state these facts, and allow the public to draw their own conclusions as to the effect of the proceedings of the Society. As, perhaps, a more complete proof of the use made of the suggestions of the Society, the Council may refer to another bill which has also passed the House of Commons, and been read a second time in the House of Lords,—as to the Law of Landlord and Tenant, chiefly relating to what has in some parts of England been called "Tenant Right." On this difficult subject the House of Commons seem very much to have adopted the conclusions of the Committee of the Society, which made a report on that subject, not only as to what could properly be the subject of legislation, but also as to what could not.

In the address presented to the public at the meeting held in this room last year, the Council found it necessary, in alluding to the state of the Law of Debtor and Creditor, to observe that, notwithstanding the anxious labours which had theretofore been expended on this important subject by some of the most eminent members of the Legislature, the state of that law "yet remained uncertain and insufficient." It is now, however, the pleasing duty of the Council to state that there is pending in Parliament a bill for amending the Law of Bankruptcy, which has passed the House of Lords and has been sent down to the House of Commons, which is understood to afford much satisfaction to the mercantile part of the community. For this important and elaborate measure we are mainly indebted to the anxious and unceasing exertions of the noble President of this Society.

It is now proposed to notice some other matters which have engaged the attention of the Society. The report noticed in the last address of the Council, on the Law of Divorce, was duly received by the Society; but it is to be regretted that no step has been taken as to that subject in Parliament.

A report from the Common Law Committee on admitting the evidence of parties to actions, has also been presented and received by the Society, and a bill has been introduced in the present Session into the House of Lords to amend the Law of Evidence, containing,

amongst others, provisions for effecting this object.

The law relating to the treatment of Lunatics was the subject of much discussion, not only in the Committee to which it was referred, but in the Society at large; and although the report called forth some opposition, yet it was at length unanimously adopted both by the Committee and the Society; and your Council have reason to think that its recommendations are approved of by those best acquainted with the subject, and will in time be adopted.

The subject of Limited Liability in Partnership, known in France as partnership *en commandite*, has also engaged the attention of a Special Committee composed as well of commercial as legal members. It is proper to state that, both in the Committee and in the Society at large, great difference of opinion prevails on the subject, although resolutions in favour of an alteration of the existing rule of English Law in this respect were carried by a small majority.

The other subjects which have principally engaged the attention of the Society are the Reform of the Master's Office,—on which subject a set of orders has been submitted by a committee to the Society; and the present mode of reporting the decisions of the Courts of Law and Equity, and of Legal Publications, which is still under the consideration of the Society.

The Council have watched, with great interest, the progress and operation of the County Courts, as affording evidence of the benefit to the community of a cheap and simple procedure. They have very recently referred to one of the committees an inquiry as to what points the jurisdiction of these Courts may be beneficially extended,—a subject of very great importance.

This brief notice of what has been done since the last Report is sufficient to show that the present year has not been an idle one. The Council lament that the cause of Legal Education has made so little progress, which they are unwilling to attribute to the remissness of the rulers of the Inns of Court—its proper foster-fathers; and they look forward, as the proper remedy for this and other defects in the judicial institutions of the country, to the establishment of a Law University, and the institution of a Minister of Justice.

The Council have, in conclusion, to observe, that it is of great importance that as many members as possible should take part in the proceedings of the Society, and that the labour should not be thrown on a few. They have also to remind members that although hitherto its funds, by careful management, have been adequate to meet all demands, yet that, if larger funds were placed at their disposal, more good might be done; and they confidently remind the public that, with their present limited means, much has been accomplished. They earnestly, therefore, impress on their fellow members, and all others interested in this important subject, that they should exert

themselves in extending a knowledge of the Society, in procuring new members, and, generally, in furthering the great cause of the Amendment of the Law.

DEATH OF MR. JUSTICE COLTMAN.

THE public participate in the concern universally felt amongst the members of the legal profession at the sudden and lamented death of Sir Thomas Coltman, who was engaged only this day se'nnight in the exercise of his judicial duties at the Old Bailey. Sir Thomas was called to the Bar on the 24th May, 1808, by the Society of Lincoln's Inn; he was appointed King's Counsel in 1830, and became one of the Justices of the Common Pleas soon after Hilary Vacation, 1837, upon the retirement of Mr. Justice Gaselee, and was the senior judge of that Court.

He was educated at Rugby, and obtained an exhibition to Trinity College, Cambridge, where he received a fellowship. The learned judge was associated with the Lord Chief Justice of his Court to go the Norfolk Circuit, and they were to have opened the Commission at Aylesbury on the 12th instant. He died on Wednesday the 11th, at his house in London, aged 68.

It is, perhaps, too early to speculate upon the appointment of a successor to the vacant seat on the Bench; yet rumour is already busy in the attempt to fill so important an office as a judge of the Superior Courts. It is probable that the Attorney-General looks forward to a higher step on the Bench, and in that case, there is no one so likely to be promoted as her Majesty's learned and eloquent ancient serjeant, the senior advocate of his Court, and indeed the permanent head of the Bar.

STATUS OF ATTORNEYS.

To the Editor of the Legal Observer.

SIR,—I am obliged to you for having inserted my former letter on the Status of Attorneys, although from an observation in a subsequent number you state that you did not agree with my view of the case. I think I may say that the profession, generally speaking, agree with me on the subject; indeed, with one exception only, every person I have spoken to on the subject, including members of the Law Society, men at the Bar, both Queen's Counsel and those under the Bar and also on the Bench, agree that I have rightly pointed out the cause of the bad opinion entertained of attorneys; and so far has this been expressed and felt, that I believe a remedy will be attempted by legislative means.

I have read the letters of your two correspond-

ents opposed to my views, (pp. 142, 3,) but really, sir, you cannot say that those letters at all answer my objections. Could not your correspondent as well have kept his widowed mother upon a good salary obtained as managing clerk as at present? The question must occur to you, when these gentlemen are out of their articles and admitted attorneys, how are they to obtain a livelihood? Experience answers it as follows:—Not having any connexion of their own, they rob their former masters and benefactors of a portion of their connexion, or “make law” in a disreputable manner.

I think that this practice of promiscuously giving articles to managing clerks, at the same time giving a salary, does not touch the sympathies of the heart or yield the required fruits of gratitude; on the contrary, it causes those who properly belong to the lower classes to usurp the station of the middle classes, thereby subverting the order and grade of society, and this in the profession of an attorney does in most instances great positive injury.

There are certain obvious reasons why I should not make myself known; but I will say thus much—that I did not make the assertion as to the evil results in my former letter without having within my own knowledge many convincing proofs of the correctness of my views. I am now in a position to defy the consequences of the evil system personally; I have made my suggestions solely with a view of benefitting the profession to which I belong. The tone of your correspondent's letters are not quite becoming their station. The latter part of my letter has not been touched upon at all.

AN ATTORNEY.

SIR,—It was with much pleasure I read the letter of “An Attorney” in your number of 9th of June last, on the Status of Attorneys, and in the remarks stated therein, I entirely coincide, notwithstanding the letters in your number of 23rd of June, as it is well known in the profession that a great number of men of the lowest origin and intellect have contrived to get into it, and who “An Attorney” very properly designates “scamps;” and as to the assertion that “for one charity scamp, twenty could be named who are the production of from 300 to 500 guineas premium,” I positively deny this, having had about thirty years experience in the profession, in addition to a very extensive knowledge of professional men generally, and therefore I can safely assert that such instances are but seldom met with.

There is no doubt that a bad opinion of the profession does exist, and I (in common with many professional friends) consider it is mainly, if not entirely, owing to the characters very properly denounced “scamps,” that have got into it, and to their disreputable conduct. I really think your correspondent “A. Z.,” must have mistaken the meaning of the word “libel,” or he never would have so called the well-known statements in the letter of “An Attorney.”

AN OLD PRACTITIONER.

Cambridge.

SIR,—As I perceive, by your last number, that you promise some observations upon the controversy lately commenced with the paid articulated clerks, I take the liberty of calling your attention to a passage in the Letter of “An Attorney,” which appears to require explanation; for as it stands it is calculated to mislead. I refer to that part in which he speaks of “the pernicious system of the liberal-minded attorney giving his managing clerk his articles, and paying him a salary during his service;” and which would seem to imply that in such cases the master makes his clerk a present of the stamp duty. If this is really the meaning intended to be conveyed, I can only say that I have made diligent inquiry of all my acquaintances, and, in the few instances which I have been able to discover of articulated clerks receiving salary, the stamp duty has been invariably paid by the clerk himself, or by his relatives; and, in most cases, a smaller salary is given than the clerk would be able to obtain if engaged in the ordinary way.

There are other portions of “An Attorney's” Letter of which I think the parties attacked have reason to complain. Amongst these may be mentioned his extremely illogical conclusion that because a clerk is unable to pay a large premium, and to sustain the expense of qualifying himself as an attorney (amounting to about 2,000*l.*) without assistance from salary, he is therefore one “whose parents can give him no other education than what a charity school imparts,” and who “has no other education than merely learning to read and write.” This, if true, would perhaps be no disgrace; but, as it is, it serves only to display a spirit which I, for one, exceedingly regret to see.

On the whole, I cannot help believing that the anger of “An Attorney” is excited not so much by the defects of the persons he condemns as by their merits—moral and intellectual—which are the means of withdrawing a small part of the gains of the profession from those to whom he considers that such gains properly belong; and I admit that it is very probable that the heads of wealthy families and successful tradesmen who have attained a position which leads them to despise the means by which they rose, may, from the crowding of all professions, occasionally experience a difficulty in placing out their children in the world according to their wishes; and, on this account, it may be desirable that the profession, as a field of profitable and honourable employment, should be strictly observed for their use. But this, I conceive, is a question which they will have to settle with the public; and I do hope, before it is disposed of, to see it brought forward upon its proper grounds, and not attempted to be concealed beneath an attack upon character.

ONE OF THE PROSCRIBED.

[Several other letters on this subject have been received and will appear in the next or an early number.]

RECENT DECISIONS IN THE SUPERIOR COURTS:

AND SHORT NOTES OF CASES.

Rolls' Court.

In re Remnant. June 23, 1849.

BILL OF COSTS.—SPECIFIC CASH PAYMENTS.
—CASH DISBURSEMENTS.

Held, that solicitors, in their bills of costs, should distinguish the specific cash payments which they are not liable quâ solicitors to pay from cash disbursements made in the progress of a suit, or for which they are the parties primarily liable.

THIS petition was presented by Mr. Remnant, a solicitor, and prayed that the Taxing Master might be directed to review his taxation of a bill of costs which had been incurred by a Mr. James Taylor for business transacted relative to the will of one John Taylor. It appeared that Mr. Remnant had paid to a Mr. Johnson the sum of 54l. 18s. 6d. which his client Mr. Taylor owed to him, and charged this item in his bill of costs as a professional disbursement. The Master had disallowed this charge in the bill of costs upon taxation, on the ground that it properly formed part of the cash account between the solicitor and his client. The costs of the taxation consequently fell on the solicitor as more than one-sixth part of the amount of the bill of costs had been taxed off.

As there appeared to be some difference in the reported cases on the subject, the Master of the Rolls had desired the Taxing Masters to give their opinion. The following certificate was accordingly given:—

"To the Right Honourable the Master of the Rolls.—In compliance with your lordship's directions, we the undersigned beg leave respectfully to state, that we have been unable to reconcile all the reported cases with the actual practice of the profession in charging some payments as professional disbursements in bills of costs, and others as payments in cash accounts. The practice is almost universal to make a distinction between such payments; and, if we may be allowed to state what in our opinion is the principle on which the practice of the profession rests, apart from, and without reference to, the reported cases, we should state as follows, viz.:

"That such payments as the solicitor, in due discharge of the duty that he has undertaken, is bound to make so long as he continues to act as solicitor, whether his client furnishes him with money for the purpose, or with money on account or not—as for instance, fees of the officers of the Court, fees of counsel, expenses of witnesses, &c., and also such payments in general business, not in suits, as the solicitor is looked upon as the person bound by custom and practice to make—as for instance, counsels' fees on abstracts and conveyances, payments for registers in proving pedigree, stamp duty on conveyances and mortgages, charges of agents, stationers, or printers employed by him, &c., are by practice, and we think properly, introduced into the solicitor's bill of fees and disbursements.

"But that payment which the solicitor is not either by law bound to make, or by custom looked upon as the person to make,—as for instance, purchase monies or interest thereon, monies paid into Court, damages or costs paid to opponent parties, bills due to the solicitors of trustees, mortgagees, or other parties, legacy or residuary duties, or other payments of a like description, which the solicitor makes as agent, on the order of the client, and not in discharge of his own duty or liability as solicitor, are by practice, and we think properly, charged in the cash account.

We think, also, that the question, whether such payments are professional disbursements or otherwise, is not affected by the state of the cash account between the solicitor and the client, and that, for instance, counsels' fees would not the less properly be introduced into the bill of costs as a professional disbursement, because the client may have given money expressly for paying them, and that purchase-money or damages would not be properly so introduced, notwithstanding the solicitor may have advanced the money out of his own funds.

We have availed ourselves of your lordship's permission to state our opinion without reference to the decided cases, some of which we are aware are not quite in accordance with it; but we are satisfied that, although instances may no doubt be produced to the contrary, the general practice of the profession is in accordance with the principle we have above stated."

"Signed by all the Taxing Masters.
"Taxing Masters' Office, June 20, 1849."

The Master of the Rolls, after stating the facts of the case and referring to the above certificate, said, that solicitors should distinguish specific cash payments from the cash disbursements made in the progress of a suit, and that as the item disallowed by the Master was one which it was not incumbent upon a solicitor, *quâ* solicitor, to pay, the disallowance in the bill of costs was right, and the petition would be dismissed, but, under the circumstances disclosed in the proceedings, without costs.

July 4.—*Parr v. Eastley*—Order made to take preliminary accounts under 5th General Order of 9th May, 1839.

—4.—*Foley v. Smith*—Bill to remain on file, on payment of the costs of order of Dec. 18, and of those of March 27—Costs of this motion reserved.

—9.—*Attorney-General v. Wimborne School*—*Cur. ad. vult.*

—4, 9, 10.—*In re Williams and others*—Part heard.

Vice-Chancellor of England.

In re India and Australia Mail Steam Packet Company. May 28, 1849.

WINDING UP ACT.—JURISDICTION.—IN JUNCTION.

Where an injunction was obtained ex parte

restraining creditors from proceeding in the Lord Mayor's Court, and there was no interim manager appointed under the order for winding up until after the date of the injunction: Held that the Court had not jurisdiction to restrain such creditors under the 58th sect. of the 11 & 12 Vict. c. 45, although an interim manager had been since appointed.

An injunction had been granted in this case on the 15th May, on the application of Messrs. Yates and Ford, two of the directors of the Company, to restrain Messrs. Causton and Jones, creditors of the Company, from proceeding in the Lord Mayor's Court against them or any other of the directors. It appeared that Messrs. Causton and Jones had attached the funds of the Company for a debt of 528*l.* 6*s.* 8*d.* alleged to be due for printing and stationery for the Company. On the 4th May an order was made for winding up the affairs of the Company.

By the 58th sect. of the 11 & 12 Vict. c. 45, it is enacted, that "except as is by this Act expressly provided, nothing in this act contained, nor any petition or order under the same, for the dissolution and winding up, or for the winding up of any company, shall extend or enlarge, diminish, prejudice, or in anywise alter or affect the rights or remedies of creditors, or other persons not being contributories of the company, or the rights or remedies of creditors being also contributories, but being creditors of the company upon a distinct and independent account, whether against the company or against any of the contributories of the same, nor the rights or remedies of the company against any contributories or other persons, nor shall alter or affect any contracts or engagements entered into by or with the company, or any person acting on behalf of the same, previously to any such petition, nor any actions, suits, or other proceedings pending at the date of the petition."

Bethell and *Jessel* now moved to dissolve the injunction so obtained *ex parte*, on the ground that the Court had no jurisdiction, as there was no interim manager at the time of the injunction.

Rolt and *Hetherington*, in support of the injunction, stated that an interim manager had been since appointed.

The Vice-Chancellor said, that special injunctions must stand or fall upon the merits which they possessed at the time they were granted. He had granted this injunction upon the supposed analogy between this case and a common creditor's suit, feeling no harm could be done; but, on looking at the language of the 58th sect. of the 11 & 12 Vict. c. 45, it did not appear that the Court had jurisdiction. There was no enactment as to the case of creditors suing in the Lord Mayor's Court, and the appointment of the manager since the *ex parte* injunction did not make the act applicable. The injunction must, therefore, be dismissed with costs.

July 4.—*Kinnersley v. North Staffordshire Railway Company*—Injunction refused to restrain company from taking compulsory possession of land—issue directed as to whether the company's powers had expired.

— 5.—*Parkyn v. Cape*—Publication to be enlarged on payment of costs by defendant, and on her undertaking to consent to set down original bill and cross cause for hearing before the same judge.

— 6.—*Collett v. Maule*—

— 7, 9, 10.—*Mornington v. Mornington*—Part heard.

Vice-Chancellor Knight Bruce.

Coombes v. Brookes. May 26, 1849.

TRIAL OF ISSUES.—ADVANCE TO PETITIONER TO TRY THE SAME OUT OF FUND IN COURT.

*A sum of 260*l.* was advanced out of a fund in Court to a petitioner who was only entitled thereto contingently, for the purpose of trying certain issues directed by the Court, upon the petitioner's solicitor undertaking duly to apply the same, and upon the petitioner and his solicitor undertaking to abide by any further order of the Court as to its replacement.*

THIS petition was presented by a Mr. Hayward, who is entitled for life to a sum of money in Court bequeathed in trust for him for life, with remainder to his children at 21 or marriage, and if no child should attain 21 or marry, then to his sister, Mrs. Coombes, for life, remainder to Mr. Coombes for life, remainder to their children. It prayed that an advance of 300*l.* out of the fund might be made to the petitioner, so as to enable him to try the issues which had been directed by the Court in the cross suit of *Hayward v. Purssey*, which sought to impeach certain under leases and transfers of stock in favour of Mr. Coombes, and made by the testator on the ground of alleged unsoundness of mind of Mr. Coombes. The petitioner was unable otherwise to try these issues, and the solicitor of the petitioner would undertake duly to apply the money in the trial of these issues.

Malins and *H. Stevens* in support of the petition; *Russell*, *Hare*, and *W. Rudall* for Mr. and Mrs. Coombes; citing *Nye v. Maule*, 4 My. & Cr. 342; *Peck v. Beechey*, 2 Sim. 40; *Gregg v. Taylor*, 4 Russ. 279; and *Elderton* for the infant children of Mr. Coombes, contra; *De Gea* for the executors.

The Vice-Chancellor said, that the cases cited at bar did not apply, and ordered 260*l.* to be advanced for the purposes specified, on the petitioner's solicitor undertaking to apply the same in the trial of the issues, and on both the petitioner and his solicitor undertaking to abide by any order of the Court as to the restitution of the amount.

July 4.—*Ex parte Pim, In re St. George's Steam Packet Company*—Held, that the estate of a testator who bought shares and entered them in the names of his son and executor,

who never accepted—was not liable in respect thereof.

— 4.—*Ex parte Sadler, In re North of England Joint-Stock Banking Company*—Master's decision as to omission of wife's name on list to be reviewed, and as to the insertion of the husband's name confirmed.

— 4.—*Hamilton v. Rankin*—Injunction granted restraining defendant from suing out execution on judgment in action, or an award, upon the plaintiff bringing the amount of damages into Court, to abide the order of the Court and paying costs of action.

— 6.—*In re St. George's Steam Packet Company, Ex parte Maguire*—Motion to omit name from list of contributories, refused with costs.

— 6.—*In re Merionethshire Slate and Slate-Slab Company*—Order for winding up.

— *In re Anti-dry-rot Company*—The like.

— 6.—*In re Trent Valley and Chester and Holyhead Continuation Railway Company*—The like.

— 6.—*Ex parte The Trustees of the Duchess of Marlborough's Charity, In re Midland Railway Company's Acts*—Order for payment of money to petitioners.

— 4, 7.—*Ex parte Davidson, In re Mary-le-bone Joint-Stock Banking Company*—Cur. ad. vult.

— 7.—*In re North of England Joint-Stock Banking Company, Ex parte Sanderson*—Held, that name of transferee of share was properly inserted in list of contributories, with qualification limiting the liability from the time of contracting to purchase the shares.

— 9.—*Ex parte Broune, In re Fenwick, Henderson and another, respondents*—Petition dismissed with costs.

— 5, 7, 10.—*Rains v. Hertslet and the Commissioners of Sewers*—Stand over.

— 10.—*In re Oxford and Worcester Extension and Chester Junction Railway Company*—Master's order requiring delivery of papers by solicitor who claimed a lien, discharged.

— 10.—*Attorney-General v. Dew*—Part heard.

Vice-Chancellor Wigram.

Waring v. Manchester, Sheffield, and Lincolnshire Railway Company. June 4, 5, 6, 1849.

CONTRACT.—DEMURRER FOR WANT OF EQUITY.—JURISDICTION.

Where the allegations in a bill, seeking an injunction to restrain the defendants from entering on the plaintiffs' works, and completing the contract at their expense, and for other relief, would, if proved, establish fraud on the part of the defendants' officer, preventing the fulfilment of the contract; a demurrer for want of equity was overruled.

THE plaintiffs, in March, 1847, contracted with the defendants for the execution of a portion of their railway near Sheffield, for the sum of 11,000*l.*, on or before the 1st June, 1849. The engineer of the company was from month to month to certify the amount to be paid to the plaintiffs for the work done; and on the

non-completion of the work by the time specified, the plaintiffs were to pay 150*l.* a day until the engineer should specify that the line was properly completed. The defendants were also, in the event of non-fulfilment, empowered, upon giving 14 days' notice, to enter on and take possession of the works, and complete the same at the plaintiffs' expense. The bill stated that the defendants' engineer did not fairly certify the amount of work done from month to month, whereby the payments were considerably less than they ought to have been; and that in several cases possession of the land could not be obtained, and also, that the defendants had not at the proper periods provided the permanent materials; and the company being unable to provide the necessary funds at the times and in the instalments specified, they requested the plaintiffs to accept debentures, and the engineer directed the plaintiffs to proceed more slowly with the works. The plaintiffs accordingly complied with the request, and the defendants, notwithstanding, in Jan. 1849, informed the contractor that the works must be completed within the specified time. The plaintiffs then proceeded more rapidly, but informed the defendants, that after the delay which had occurred, the contract could not be completed by June 1st. The company, however, on 21st May gave the plaintiff notice that they would put in force the powers reserved to them in the contract to take possession of the works. Whereupon this bill was filed for an injunction restraining the defendants from so entering, and that the plaintiffs might be specifically decreed to perform the contract, and for an account of the monies due to them. A demurrer having been put in for want of equity,

The *Solicitor-General* and *Osborne* now appeared in support, and contended that the relief sought was purely legal, and that the engineer was, under the terms of the contract, the judge of the amount of work to be paid for from month to month, and also of the rapidity with which the works were to be proceeded.

Wood and Erskine, contra, contended that the completion of the contract by the time specified was rendered impossible by the defendants' officer, and that the company had thereby forfeited their power of entry on the nonfulfilment of the contract as to time.

The *Vice-Chancellor* said, that according to the decisions of the Lord Chancellor in *Die-trichsen v. Cabburn*, 2 Phill. 52, where a party who had performed his part of the contract sought a decree for specific performance of the contract, the Court would interfere, provided nothing remained to be performed by him which the Court could not secure to the defendant. The allegations in the bill of the fraudulent conduct of the engineer would, if proved, establish that species of fraud which gives the Court jurisdiction; and in trying the validity of the demurrer, these allegations must be assumed to be true. The fact that there still remained something for the plaintiffs to do under the contract did not make any difference, as the performance thereof might be secured to the defendants,

and the plaintiffs were therefore entitled to some relief. The extent of such relief it was not necessary to specify, as the Court would interfere, as in the case of partnerships, to prevent a particular and distinct breach of contract, without bringing the whole of the transactions before the Court. The allegations of fraud clearly brought the case within the case of *Mackintosh v. The Great Western Rail. Co.*, (V. C. Knight Bruce, Dec. 12, 14, 1848,) and the demurrer must, therefore, be overruled.

—4.—*In re Lancaster and Newcastle Direct Railway Company*—Order for winding up.

—4, 5.—*East Lancashire Railway Company v. Hattersley*—Injunction granted to restrain defendant from interfering on line of Railway which he had contracted to construct, he having failed to complete the same by the specified time. Company to pay for the works completed, and as to the rest, issue to be sent to a Court of Law to determine whether or not the defendant had incurred a forfeiture by the non-completion; to be tried at the next Liverpool Assizes, by consent.

—7.—*In re Bedford Charities*—Petition dismissed, with costs.

—4, 5, 6, 9, 10.—*Attorney-General v. Murdoch*—Cur. ad vult.

Queen's Bench.

Chapman v. Great Northern Railway Company, May 5, 7, 1849.

AWARD.—RESIDENTIAL INJURY.—CONDUCT OF ARBITRATOR.

An arbitrator, before his appointment to determine the amount of damage consequent on a railway passing through the plaintiff's land, went over the property with the plaintiff, who pointed out the injury that would arise: Held, that the railway company had waived any objection to the award on this ground by their subsequently going before him and recognizing his appointment.

The arbitrator again went to see the state of the railway works in accordance with an intention expressed previously in the presence of both parties and unobjected to, and again saw the plaintiff: Held, that the Court would not infer that anything beyond the ordinary civilities took place, and that as he had gone with the full previous knowledge of the company, it was no ground to set aside the award.

MR. CHAPMAN was the owner and occupier of a house called Haringay House, situated in its own grounds and forming a secluded retreat at Hornsey, of which the company required a portion for the purposes of their railway. It was accordingly agreed, when the bill was before the House of Lords, that either a peer or member of parliament should be appointed arbitrator to determine the amount to be paid to the plaintiff for residential damage, consequent on the destruction of the privacy of the house. Mr. Philip Bennett, member for West-Suffolk,

was accordingly appointed arbitrator between the parties, and he had awarded a sum of 6,200*l.* to be paid by the company for such residential damage. A rule nisi had been obtained to set aside the award on the ground that it was partial, and that the arbitrator had been unduly influenced by Mr. Chapman. It appeared that on the 15th May, 1848, Mr. Bennett, before accepting the arbitration, had gone to the house in question and had seen and breakfasted with Mr. and Mrs. Chapman, who had pointed out to him the injury which would be sustained by the railway passing near their house. The arbitrator had again gone to Mr. Chapman's, after the reference was concluded, but before the making of the award, for the purpose of inspecting the state of the railway works in the neighbourhood, and had seen Mr. Chapman, but it did not appear what passed on that occasion.

Sir F. Thesiger and Bovill now showed cause against the rule, and contended that if there had been any misconduct on the part of the arbitrator on the first occasion of going to the house, it had been waived by the company subsequently going before the arbitrator and recognizing his authority; and with regard to the second occasion, that Mr. Bennett went to Mr. Chapman's in pursuance of an intention previously expressed in the presence of the parties, in order that he might inspect the altered state of the premises, and that this was not objected to.

Sir F. Kelley, Wortley, and H. Hill in support of the rule.

The Court said, that even if on the first occasion the arbitrator had been guilty of what might have legally amounted to misconduct, the objection had been waived subsequently by the company. It could not be inferred from the evidence that anything took place on the second occasion beyond mere civilities, and as the arbitrator had gone with the full knowledge of the company, who had not objected to his going, although it was of course probable he would see Mr. Chapman, there was no ground to impeach the award, and the rule nisi must be discharged with costs.

July 5.—*Hammond v. Rendyshe*—Rule absolute to enter verdict for plaintiff.

—5.—*Regina v. Dyer*—Judgment for the defendant.

—5.—*Regina v. Parham*—Judgment for the defendant.

—5.—*Regina v. Trustees of Orton Vicarage*—Rule for mandamus discharged to present to vicarage.

—5.—*Ayrton v. Abbott*—Judgment for the plaintiff.

—5.—*Regina v. Paton and another, Justices of Oxfordshire*—Appellant held liable to pay highway rate, the time for appealing having expired.

—5.—*Yates v. Palmer*—Rule for prohibition discharged with costs.

—*Bailey v. Macauley*—Rule absolute for new trial.

July 5.—*Bailey, brothers, v. Bracebridge, Same v. Haines*—Rule absolute for new trial.

—5.—*Daubeny v. Phipps*—Rule absolute for new trial.

—5.—*Regina v. Heming*—Rule for mandamus to register name of party as shareholder.

—5.—*Day v. Paupierre*—Rule to discharge order for defendant to put in good bail on *certiorari* to bring up attachment from Lord Mayor's Court, discharged with costs.

—5.—*Whalley v. Macconnell*—Rule to set aside verdict and to enter nonsuit, discharged.

Common Pleas.

Peterson v. Davis. June 1, 1849.

CITY OF LONDON SMALL DEBTS' ACT.— SUGGESTION TO DEPRIVE OF COSTS.

Where it is not alleged, on the suggestion to deprive plaintiff of costs, that he did not reside at the time of action more than twenty miles from the defendant's place of abode, but merely from the place of business, a demurrer by the plaintiff was allowed, as the word dwells, in the 10 & 11 Vict. c. lxxi, s. 112, means personal residence, and not merely his place of business.

A SUGGESTION had been entered by the defendant upon the record, to deprive of costs the plaintiff, who had recovered a verdict under 20*l.* in a superior Court. The plaintiff demurred, on the ground that there was no allegation that the plaintiff, at the time of action, did not reside more than twenty miles from the defendant's abode.

By the 112th section of the 10 & 11 Vict. c. lxxi. (the City of London Small Debts' Act), it is enacted, that "All actions and proceedings which, before the passing of this act might have been brought in any of her Majesty's Superior Courts of Record, where the plaintiff dwells more than twenty miles from the defendant," &c., "may be brought and determined in any such Superior Court, at the election of the party suing or proceeding, as if this act had not been passed."

And by the 113th section it is enacted that, "if any action shall be commenced after the passing of this act in any of her Majesty's Superior Courts of Record, for any cause other than those lastly hereinbefore specified, for which a plaint might have been entered in the Court holden under the provisions of this act, and a verdict shall be found for the plaintiff for a sum not more than 20*l.* if the said action is founded on contract, or less than 5*l.* if it be founded on tort, the said plaintiff shall have judgment to recover such sum only, and no costs," &c.

Peterson, in support of the demurrer, contended that it was necessary for the defendant to have negatived the fact that the plaintiff dwelt within twenty miles of the defendant's abode, instead of merely alleging that the plaintiff did not dwell more than twenty miles from the defendant's place of business. See *Shiels v. Rait*, 37 L. O. 339.

Hine, contra and in support of the suggestion, urged that the words "from the de-

fendant" in the 112th section, included place of abode or of business, and ought to be expounded in such extended sense.

The Court said that the language of the 112th sec. was free from ambiguity, and clearly meant where the plaintiff and defendant dwelt more than twenty miles from each other. The 40th section provides, "that such summons may issue provided the defendant or one of the defendants shall dwell or carry on his business within the City of London or the liberties thereof at the time of the action brought, or provided the defendant or one of the defendants shall have dwelt or carried on his business there at some time within six calendar months next before the time of action brought, or if the cause of action arose therein." No such expressions, however, were used in the 112th section, which compelled a plaintiff to sue in the inferior Court. The words of the 112th section, "from the defendant," clearly meant the defendant's residence, which was more permanent and more likely to be generally known than his place of business. The demurrer must, therefore, be allowed, and judgment be for the plaintiff.

Exchequer.

Horn v. Thornborough. May 14, 1849.

7 & 8 G. 4, c. 30.—NOTICE OF ACTION.— MISDIRECTION.

Where a party acting for the landlord gave the plaintiff's wife in custody under the 7 & 8 G. 4, c. 30, for malicious injury to his property, in the belief that he was entitled to do so under that act, Held, that the landlord was entitled to notice of action, and that the question for the jury in an action for trespass and assault, was not whether the landlord was "owner" of the property, but whether he had acted bona fide and in the belief that he was justified by the provisions of the act.

THIS was an action of trespass for breaking into and entering the house of the plaintiff and taking away his goods, and also that the defendant had, without reasonable cause, assaulted the wife of the plaintiff and given her in custody on a charge of malicious trespass. The defendant pleaded the general issue "not guilty by statute." It appeared that the defendant's son had taken possession of the house in his father's name as landlord, and thinking that the plaintiff's wife was engaged in removing the furniture of the plaintiff, who was a prisoner in Whitecross Street prison, had locked her out. Upon her return, she conducted herself with great violence, and broke several windows, on which she was given in custody under the 7 & 8 G. 4, c. 30. The case was, however, dismissed by the magistrate on the ground that it did not fall within the statute as the defendant was only the owner of the reversion after the expiration of the lease to the plaintiff. Mr. Baron Platt, who presided at the trial, being of the same opinion as the ma-

gistrate, the jury returned a general verdict for the plaintiff, with 25*l.* damages.

A rule nisi for new trial having been obtained on the ground of misdirection and that the defendant was entitled to notice of action under the 7 & 8 G. 4, c. 30, whether he was entitled to the protection of the statute or not, provided he *bond fide* and reasonably believed he was justified by the statute.

Car against the rule; *Charnock and Barnard* in support.

The Court said that the defendant was entitled to the protection of the statute if he *bond fide* and reasonably believed that he was authorised in his conduct under its provisions. It was, therefore, a question for the jury whether he acted *bond fide*, and as that was not put to them by the judge, the rule must be absolute for a new trial, and notice of action must be given to the defendant.

July 6.—*Holkingworth v. Palmer*—Judgment for the plaintiff.

— 6.—*Hamilton and another v. Spottiswoode*—Judgment for the plaintiff.

— 6.—*Reely v. London and North-western Railway Company*—Rule absolute to enter nonsuit.

— 6.—*Rigby and another v. Great Western Railway Company*—Certificate to the Lord Chancellor that plaintiffs were bound by their covenant with sub-lessee to compel the Company to observe the covenants of the original lease from them to plaintiffs.

— 6.—*Master Pilots of Newcastle on Tyne v. Hamilton*—Judgment for the plaintiffs.

— 6.—*Hebbitt v. London and North-western Railway Company*—Rule absolute to enter verdict for defendants.

— 6.—*Reid v. Allen*—Judgment for the plaintiff.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Law of Bankruptcy.

[For the previous Sections of this Series of the Digest in the present Volume, see,—

Privy Council :

Appeals, 58.

House of Lords :

Appeals, 171.]

ACT OF BANKRUPTCY.

1. *Trust deed*.—*Annulling*.—*Petitioning creditor*.—The 5 & 6 Vict. c. 122, s. 8, providing that no fiat shall be invalid by reason of the Act of Bankruptcy being concerted, does not enable a creditor to sue out a fiat founded on a trust deed executed with his concurrence, and such a fiat may be annulled at the instance of another creditor. *Ex parte Payne, in re Tverser*, 1 De Gex, 534.

2. 1 & 2 Vict. c. 110, s. 8, not repealed by 5 & 6 Vict. c. 122.—*Semble*, that the 1 & 2 Vict. c. 110, s. 8, is not repealed by the 5 & 6 Vict. c. 122. *Ex parte Goodall, in re Goodall*, 1 De Gex, 580.

ADVERTISEMENT.

See *Surrender*.

ANNUITY.

Enrolment of securities.—Where an annuity was partly secured by deeds deposited, with a written memorandum, and partly by a bond duly enrolled—the whole of the securities must be enrolled, and a petition for the sale of the securities not enrolled was dismissed. *Ex parte Miller, in re Swann*, 37 L. O. 357.

ANNULLING FIAT.

1. *Separate or joint fiat*.—It is a sufficient answer to an application to annul a separate fiat in favour of a joint fiat, to show that there are no joint assets, in this country besides those

subject to liens for more than their actual value. *Ex parte Rennick, in re Ackland*, 37 L. O. 296.

2. *Costs*.—Bankrupt's own fiat annulled with his consent and consent of assignees, to enable a creditor's fiat to be sued out, under which transactions between the bankrupt and others might be impeached. Form of order as to costs. *Ex parte Louch, in re Dutchman*, 1 De Gex, 463.

3. *Costs*.—Petitioner making improper and unjustifiable charges ordered to pay all the costs, though he succeeds as to a part of his petition. *Ex parte Norton, in re Robinson*, 1 De Gex, 504.

4. *Satisfaction of detaining creditor's debt*.—*Quere*, whether a creditor who detains a bankrupt in execution till he is discharged by his certificate is competent, if the fiat be annulled, to issue a new one?

Quere, whether, on the first fiat being annulled, the creditor can again take the body of the debtor in execution, or whether the debt is satisfied? *Ex parte Norton, in re Robinson*, 1 De Gex, 504.

5. *Time of presenting petition*.—When the fiat was sued out by the bankrupt on September 19, and assignees were chosen on October 9, and the certificate allowed on December 14: *Held*, that a creditor's petition to annul, presented on December 14, was not too late. *Ex parte Dering, in re Cramp*, 1 De Gex, 398.

See *Act of Bankruptcy*, 1; *Joint-Stock Company*; *Solicitor*, 2.

ASSIGNEE.

1. *Non-payment of balance*.—20*l.* per cent.—The 6 Geo. 4, c. 16, s. 104, directing payment of 20*l.* per cent. by assignees retaining part of the estate in their hands, means 20*l.*

per cent. per annum. *Esparte Ounliffe, In re Archer*, 1 De Gex, 408.

2. *Abandoning contract.*—Removal of materials.—The bankrupt's assignees having abandoned a contract for purchase of land on building lease, were allowed six weeks to remove the building materials. *Esparte Monk, In re Potter*, 37 L. O. 434.

3. *Setting aside choice.*—A creditor, whose proof has been neither admitted nor rejected, but only adjourned, cannot be heard on his petition to set aside the choice of assignees.

At the sitting for the choice of assignees under the bankrupt's own fiat, all the creditors but two appeared by the bankrupt's solicitor, and the proof of the two was adjourned for further evidence; the other creditors then chose assignees, and afterwards the proof of the two was admitted on further evidence: *Held*, sufficient grounds for a new choice. *Esparte Morse, in re Layt*, 1 De Gex, 478.

BANKRUPT'S RE-EXAMINATION.

Costs.—When the bankrupt, after being committed, had been twice brought up to be re-examined, and had been re-committed, the Court declined to order him to be brought up again at the expense of the estate. *Esparte Rothery, in re Rothery*, 1 De Gex, 565.

CERTIFICATE.

Creditor having bankrupt in execution.—A creditor, who before the fiat has taken a bankrupt in execution, cannot be heard on the merits of his petition to stay the certificate, unless he discharges the bankrupt. *Esparte Norton, In re Robinson*, 1 De Gex, 504.

CHANGING VENUE OF FIAT.

The circumstances that the majority of the creditors, and a large proportion of the debtors of the estate, reside within the jurisdiction of a district Court, within which the trading took place, and out of which the bankrupt removed shortly before the bankruptcy, with the view, as it was stated, of having a friendly fiat issued against him in a Court where his conduct could not easily be investigated; that other bankruptcies, with which the one in question was connected, were in course of prosecution in the district Court, and that many of the creditors were unable to afford the expense of a journey to London: *Held*, insufficient grounds for transferring the fiat from London to the district Court, ~~and~~ a petition presented by creditors two months after the choice of assignees, and opposed by the assignees and the bankrupt. *Esparte Downes, In re Garbett*, 1 De Gex, 390.

See *District Courts*.

COMMITMENT.

1. *Answering to satisfaction of Commissioners.*—*Quære*, whether, under the present law, a commitment until the bankrupt shall answer to the satisfaction of the Commissioners forming the Subdivision Court, or any of the Commissioners of the Court, is good? *Esparte Martin, in re Martin*, 1 De Gex, 485.

2. *Second commitment without further warrant.*—A bankrupt was committed by a Subdivision Court until he should submit to the Subdivision Court or any of the Commissioners, and full answer make to their satisfaction. The bankrupt afterwards appeared before the Commissioner, who was acting in the prosecution of the fiat, for the purpose of passing his last examination, when, it appearing that he had not filed his balance sheet within the requisite time, the Commissioner adjourned the last examination. The bankrupt, upon that occasion, reiterated an unsatisfactory statement, for which he had been committed, with an addition, which the Commissioner held to be no ground for his discharge, and the Commissioner made no order thereupon. The bankrupt was then taken back to custody. *Held*, that his further detention was illegal, without a second warrant.

Seem, that it is not necessary, under such circumstances, that the bankrupt's further statement should be satisfactory to the Commissioners forming the Subdivision Court, but that the bankrupt answering to the satisfaction of the Commissioner acting in the prosecution of the fiat, is entitled to his discharge. *Esparte Martin, in re Martin*, 1 De Gex, 485.

Cases cited in the judgment: *Coombe's Case*, 2 Rose, 396; *Brown's Case*, 2 Rose, 400.

3. *Under 8 & 9 Vict. c. 127.*—An order of commitment under the 8 & 9 Vict. c. 127, ought not to be made *ex parte*. *Esparte Shuckhard, in re Archer*, 1 De Gex, 454.

See *Habeas Corpus*, 1.

CORPORATION.

Docket affidavit when petitioning creditor is a corporation.—Public officer of a corporation permitted to make the docket affidavit, where the corporation is the petitioning creditor. *Esparte Collins, in re Rickett*, 1 De Gex, 381.

COSTS.

See *Annulling Fiat*, 2, 3; *Bankrupt's Re-examination*; *Debtor's discharge*, 1; *Official Assignee*; *Outlawry*; *Petitioning Creditor's Debt*; *Proof of Costs*; *Solicitor*, 2.

COSTS OF STAYING DIVIDEND.

Letting in proof.—Where a creditor of the bankrupt, after attending to prove, and being prevented from doing so by the other business in Court, became insolvent, and the title of his assignee was not complete in time to enable the assignee to prove: *Held*, that he must, nevertheless, pay the costs of his petition to stay the dividend, and of the requisite sitting to receive his proof, and retain them out of the insolvent's estate. *Esparte Hughes, in re Osborne*, 1 De Gex, 387.

DEBTOR'S DISCHARGE.

1. 8 & 9 Vict. c. 127, s. 3.—“*All subsequent costs.*”—The act 8 & 9 Vict. c. 127, s. 3, providing for the discharge of a debtor who has been committed, on payment of the debt and costs remaining due at the time of the order of

imprisonment, and "all subsequent costs," means by the last expression the costs incurred by reason of default in payment of the instalments at the times ordered by the Court. *Ex parte Shuckhard, in re Archer*, 1 De Gex, 454.

2. *Construction of 11 & 12 Vict. c. 86.*—Application to discharge bankrupt under the 11 & 12 Vict. c. 86, refused on the ground that no case was made out for the interference of the Commissioner, and that the bankrupt had incurred the debt by giving his acceptance for an old debt of his partner, without any reasonable expectation of meeting such liability. *In re Chappel*, 37 L. O. 456.

DECLARATION OF INSOLVENCY.

Not conclusive evidence under 7 & 8 Vict. c. 111, s. 4.—*Authority of meeting under subscribers' agreement.*—The 7 & 8 Vict. c. 111, s. 4, providing that a copy of the declaration and minute therein mentioned shall be received as evidence, and that no further evidence shall be required of the Act of Bankruptcy mentioned in the clause, does not preclude a party disputing the bankruptcy from showing that the declaration and the resolution were unauthorized by the subscribers' agreement.

A clause in the subscribers' agreement, empowering the majority at any meeting of not less than five directors, to bind the rest and the company, does not authorize a meeting of three to do so, although they are unanimous, and the other directors are summoned and fail to attend. *Ex parte Morrison, in re the London and Birmingham Extension, and Northampton, Denbury, Leamington, and Warwick Railway Co.*, 1 De Gex, 539.

DIRECTORS' SURRENDER.

7 & 8 Vict. c. 111.—*Joint-Stock Company.*—Form of order for director of a company, which has become bankrupt under 7 & 8 Vict. c. 111, to surrender after the time limited for that purpose. *Ex parte Barber, in re Tring, Reading, and Basingstoke Railway Company*, 1 De Gex, 381.

DISTRICT COURTS.

Changing venue.—The place of business of the bankrupt was in a town, situated partly in one county and partly in another, but was actually in the one of the two counties belonging to the more remote district Court: *Held*, that the fiat ought not to be transferred on this account to the nearer Court. *Ex parte Baylies, in re Gibbs*, 1 De Gex, 440.

EQUITABLE MORTGAGE.

Fixtures.—A lessee annexed tenant's fixtures, and then deposited the lease by way of mortgage, with a memorandum not noticing the fixtures: *Held*, on his becoming bankrupt, that the security extended to the fixtures. *Ex parte Tagart, in re Mackie*, 1 De Gex, 531.

FRAUDULENT PREFERENCE.

1. *Annulling bankrupt's fiat.*—Where at the time of a fraudulent preference the bankrupt

was a trader, and there remains due a debt which was then owing, and which would support a creditor's fiat, *semble*, that such fraudulent preference may be impeached under the bankrupt's own fiat.

Held, that such a fraudulent preference does not of itself constitute a sufficient ground for annulling such a fiat against the bankrupt's consent, at the instance of a creditor, who proposes to sue out a fresh fiat, especially, if there be any doubt as to the competency of such creditor to sue out a fresh fiat. *Ex parte Norton, in re Robinson*, 1 De Gex, 504.

2. *Bankrupt's fiat.*—A fiat issued by a bankrupt against himself may be legally and equitably valid, although he may have been a party to acts of fraudulent preference. It is not sufficient ground for annulling such a fiat that it was issued mainly for the purpose of protecting the bankrupt against proceedings at law, or without a predominant wish to benefit his creditors. *Ex parte Norton, in re Robinson*, 1 De Gex, 504.

3. *Joint possession by bankrupt and true owner.*—A trader being indebted to his bankers, gave them a receipt for 1,000*l.*, purporting to be in full for the purchase of the furniture, plate, wines and effects in his house; but no possession was given of the goods till a year afterwards, when the trader's solicitor applied to the bankers on his behalf for a loan of 10,000*l.*, stating that a creditor of the trader would obtain judgment, on which he could issue execution, but that if this creditor refused to give the trader time, the bankrupt would protect himself and his other creditors. The day after this communication, and in consequence of it, the bankers sent a man to take possession, which was delivered to him by the trader, who on the same day filed a declaration of insolvency and sued out a fiat against himself: *Held*, that the delivery of possession was not a fraudulent preference.

Quere, as to the effect of a joint possession of the servants of the bankrupt and the owner of goods as to reputed ownership. *Ex parte Majoribanks, in re Rainy*, 1 De Gex, 466.

Cases cited in the judgment: *Darby v. Smith*, 8 T. R. 82; *Mace v. Cadell*, 1 Cowp. 232.

HABEAS CORPUS.

1. *Commitment of bankrupt for not giving satisfactory answer.*—The Court will not discharge from custody a bankrupt committed under the 6 G. 4, c. 16, s. 36, for not answering questions to the satisfaction of the Commissioner, where they are of opinion that the story contained in his answers is not such as to satisfy a reasonable person of its truth.

The warrant of commitment of a bankrupt, under 6 G. 4, c. 16, s. 36, set out the whole of the bankrupt's examination respecting a sum of money which was not forthcoming, and which the bankrupt alleged to have been stolen from him by house-breakers; it then proceeded,—“which answers are not, nor are any of them, satisfactory to me the said Commissioner:” *Held*, sufficient, although some of the answers

might, on the face of them, be satisfactory; for that the bankrupt was committed on account of answers which, taken as a whole, were unsatisfactory.

The warrant directed the committal of the bankrupt until he should full answer make, &c., "to the questions so put to him by me as aforesaid." *Held* good, although the words of the statute are—"until he shall full answer make to their satisfaction, to such answers as shall be put to him."

The warrant was directed "to the messenger of the said Court, and to his assistants, and to the governor or keeper of her Majesty's gaol of the Castle of York: *Held* sufficient, without naming the messenger. *Ex parte Lord*, 16 M. & W. 462.

Case cited in the judgment: *Rex v. Parrot*, 2 Burr. 1122.

2. *Reading affidavits.*—Affidavits may be read, both on behalf of the prisoner and of those opposing his discharge, on a return to a *habeas corpus*. *Ex parte Martin*, in *re Martin*, 1 De Gex, 485.

See *Commitment*, 1, 2.

INDEMNITY.

Joinder of Parties.—The names of persons interested in joint property may be used on giving security. *Ex parte Standerwicke*, in *re Dunn and others*, 37 L. O. 397.

INJUNCTION.

Proceeding in County Court.—Election.—A creditor who has proved, restrained from proceeding for the same demand in the County Court, although there is no dividend. *Ex parte Flower*, in *re Flower*, 1 De Gex, 503.

JOINT-STOCK COMPANY.

Directors may petition to annul.—Service on shareholders.—Directors of a bankrupt public company ordered by the Commissioner to prepare the balance sheet, in pursuance of the 7 & 8 Vict. c. 111, may petition to annul the fiat without alleging that they are shareholders.

On such a petition, it is necessary to serve some party who may represent the directors and shareholders (if any) who desire the fiat to stand, although the company has been dissolved under the 8 & 9 Vict. c. 28, for upwards of three months, and the fiat is sued out by parties in the character of creditors. *Ex parte Morrison*, in *re the London and Birmingham Extension and Northampton, Daventry, Leamington, and Warrington Railway Company*, 1 De Gex, 539.

See *Directors' Surrender; Declaration of Insolvency*.

JURISDICTION IN INSOLVENCY.

Pension of retired Commissioner of bankrupt.—The Vice-Chancellor will not, under the jurisdiction in bankruptcy, direct the Accountant in Bankruptcy to pay the compensation pension of a retired Commissioner of Bankrupts to his assignee, under the Insolvent Debtors' Act. *Ex parte Spooner*, in *re Payne*, 1 De Gex, 575.

LIEN OF INSURANCE BROKERS.

Quare, whether insurance brokers have a lien on a policy effected by them for the general balance due from their principal. *Ex parte Bosanquet*, in *re Boyd*, 1 De Gex, 432.

MORTGAGE.

Form of order on petition of equitable mortgagee. *Ex parte Powell*, in *re Vaughan*, 1 De Gex, 405.

NEW TRUSTEES.

Where bankrupt interested beneficially.—Where bankrupts were entitled in possession to the income of some of the trust funds, of which one of the bankrupts was trustee: *Seem*, that the Court of Review cannot appoint a new trustee without the assignees joining as petitioners. *Ex parte Cousen*, in *re Cousen*, 1 De Gex, 451.

OFFICE FEES.

Petitioning creditor's solicitor's bill.—*Quare*, whether the bill of costs of the solicitor of the petitioning creditor is payable without reserving sufficient to pay the office fees of 10*l.* and 20*l.* payable in the event of assignees being chosen, no creditor having proved, and the bankrupt having obtained his certificate. *Ex parte Hembury*, in *re Cuvendish*, 1 De Gex, 442.

OFFICIAL ASSIGNEE.

Jurisdiction of Commissioner.—Costs.—Where a creditors' assignee omitted to pay over to the official assignee the balance in his hands, and the Commissioner had directed the payment with 20*l.* per cent. upon the amount: *Held*, that application should be made to the Commissioner to enforce his order, and creditors were not allowed the extra costs occasioned by applying to the Court of Review. *Ex parte Cunliffe*, in *re Archer*, 1 De Gex, 408.

OUTLAWRY.

Costs.—A bankrupt having obtained the reversal of the outlawry against him on the representation that he had quitted England in consequence of family disagreements, the Commissioner declined to take the surrender as it appeared on his examination, that the reason was the embarrassed state of his affairs, and the official and trade assignees presented their petition to reverse the order of reversal, which, however, was dismissed with costs. *In re Turner*, 37 L. O. 453.

PARTNERS.

1. *Bill of Exchange.—Principal and surety.*—*Giving time.*—A firm of three partners agreed to make advances to a consignor upon certain terms as to commission, and as to a lien on the return proceeds of the shipments. They accepted, on the faith of this agreement, bills drawn on them by the consignor, and on one of those bills approaching maturity, they requested the holders to give them an extension of time, which the latter agreed to do, on having the acceptance of a distinct firm of C., in which

the three were also partners. A bill was accordingly drawn by the three, accepted on behalf of the six, and endorsed by the consignor, to whose credit it was carried by the holders of the former bill. Afterwards the holders were parties to an arrangement between the consignor and his creditors, whereby they released the consignor and the shipments from all liability in respect of the bills: *Held*, that they thereby discharged the firm of six. *Ex parte Webster, in re Acraman*, 1 De Gex, 414.

2. *Double proof*.—*Partners*.—Three partners of a firm of six, carried on a distinct trade in partnership, and indorsed a promissory note made by the six, which was discounted by a person who believed at the time, from general reputation, that the three were partners in the aggregate firm, but that the firms were distinct: *Held*, not a case for double proof; and *semble*, that according to the principle of *Ex parte Mout, Mont. & Bk. 28*; 2 D. & C. 419, the same decision would have been given, independently of the discounters' belief as to the composition of the firms. *Ex parte Hinton, in re Acraman*, 1 De Gex, 550.

3. *Policy of insurance*.—*Deed*.—One of two partners procured the discount of a promissory note of the firm, on an agreement for a mortgage of shares belonging to the firm in certain ships and their freight, and of the policies of insurance effected by the firm on the shares. A mortgage deed was prepared, purporting to be made by both partners, but was only executed by the one. At the time of the execution of the deed, one of the ships was lost, but this fact was then not known to the parties: *Held*, that the security was binding on the firm, notwithstanding the execution of the deed by one partner only; and passed the insurance money, although the deed was not registered according to the shipping acts. *Ex parte Busanquet, in re Boyd*, 1 De Gex, 422.

PENSION OF RETIRED COMMISSIONER.

Passing to his assignees.—Order for payment of retiring pension of Commissioner of Bankrupts to his assignees, in an unopposed case. *Ex parte Cozer, in re Cox*, 1 De Gex, 676, n.

See Jurisdiction in Insolvency.

PETITIONING CREDITORS DEBT.

Costs of attorney.—An attorney having taken his debtor in execution, cannot issue a fiat, and a doubtful claim for costs omitted in the judgment will not be substituted. *Ex parte Sturges, in re Kernol*; *Cattlin, respondent*, 37 L. O. 434.

RAID FOR COSTS.

Bill of exchange.—Where a bill of exchange was dishonoured by the acceptor, and actions were brought by the holder against the drawer as well as the acceptor, and the former became bankrupt after judgment signed and a reference to the Master to see what was due and to tax costs, and afterwards the acceptor paid the amount due on the bill: *Held*, that the holder could prove for the costs. *Ex parte Cocks, in re Barwise*, 1 De Gex, 446.

Case cited in the judgment: *Ex parte Poucher*, 1 G. & J. 385.

PROOF OF DEBT.

1. Where bills in the hands of third parties have been paid in full by dividends on different estates, the assignees under one fiat are entitled to prove as creditors upon the bills under the other. *Ex parte Johnson, in re Bulmer*, 37 L. O. 417.

2. *Imbecile creditor*.—Mother of creditor of weak intellect permitted, on her application *ex parte*, to prove on his behalf. *Ex parte Oxtoby, in re Oxtoby*, 1 De Gex, 453.

See Voluntary Bond.

RE-EXAMINATION.

See Bankrupt's Re-examination.

READING EXAMINATION.

Discrediting witness.—*Semble*, that an examination of a party before the Commissioner may be read to discredit an affidavit of the same witness made upon a petition. *Ex parte Majoribanks, in re Rainy*, 1 De Gex, 466.

RE-SALE.

Higher bidding.—At a sale under a bankruptcy, an estate was put up, subject to incumbrances. The mortgagee was the only bidder, and was declared to be the purchaser at 500*l*. A person who was present at the sale did not bid, being uncertain as to the amount of incumbrances, but petitioned for a re-sale, offering 1,250*l*., and a re-sale was accordingly directed. *Ex parte Lee, in re Higginson*, 37 L. O. 238.

REPUTED OWNERSHIP.

Oil merchants give a lien on oil belonging to them in the hands of other persons to a creditor, who, trusting to an incorrect representation of the oil merchants, delays taking possession or giving notice of lien, and the merchants re-possess themselves of the oil, mix it with their general stock, and become bankrupt. *Held*, that the lien was good, and that the oil was not in the order and disposition of the bankrupts with the consent of the true owner. *Ex parte Bell, in re Tunstall*, 1 De Gex, 577.

SCOTCH BANKRUPT.

Arrest under the 1 & 2 Vict. c. 110, s. 3, how affected by the 2 & 3 Vict. c. 41.—The defendant, who was a Scotch bankrupt, and had obtained from the Lord Ordinary a warrant of protection under the 2 & 3 Vict. c. 41, s. 17, which, by section 18 protects him from arrest in any part of the Queen's dominions, except in *meditatione fuge*, was arrested in London by virtue of a judge's order made under the 1 & 2 Vict. c. 110, s. 3, upon an affidavit that he was about to leave England and go to Scotland: *Held*, on application for his discharge, that the words in *meditatione fuge* do not apply to a case where the defendant is about to return to Scotland, but to cases where he intends to escape from his creditors by leaving the dominions. *McGregor v. Fiskin*, 35 L. O. 613.

SOLICITOR.

1. *Employment by assignees of solicitor the partner of one of the assignees.*—It is not correct, or according to the course of the Court, for the assignees to employ as their solicitor the partner of one of them who is a solicitor; and when this appeared to be the case, the Court directed that circumstance to be intimated to the Commissioner. *Exparte Downes, in re Garbett*, 1 De Gex, 390.

Cases cited in the judgment: *Exparte Badcock*, Mont. & M'Arth. 243; *Exparte Rice*, Mont. 259.

2. *Costs of annulling fiat.*—Where a country solicitor, admitted as a solicitor of the Court of Review, had, under a mistaken notion, taken an affidavit of debt (as a Master extraordinary in Chancery,) to serve as the foundation of an act of bankruptcy, and appeared upon a petition to annul the fiat, and submitted to the jurisdiction of the Court, he was ordered to pay the costs of annulling the fiat. *Exparte Benbow, in re Benbow*, 1 De Gex, 443.

3. *Responsibility of official assignee and solicitor for omission of proof in dividend list.*—Where, by mistake, one of the debts proved was omitted in the dividend list, and the fund was distributed: *Held*, that the official assignee and the solicitor to the fiat were personally liable to pay the creditor the amount which he would have received, had his debt been inserted in the list. *Exparte Hall, in re Carey*, 1 De Gex, 555.

4. *Right to begin.*—A solicitor appearing on a summary application to answer the matters of an affidavit has the right to begin.

Semble, that it must be a grave cause of complaint against an attorney of the Court, to induce the Court to interfere summarily against him for conduct not relating to a matter within the jurisdiction of the Court. *Exparte Shuckhard, in re Archer*, 1 De Gex, 454.

See Petitioning Creditor's Debt : Office Fees.

SURRENDER.

Advertisement.—By mistake the advertisement of the days appointed for the surrender of the bankrupt were not inserted in the *London Gazette* in the time required by the statute 5 & 6 Vict. c. 122, s. 23. The Court *held*, that the Commissioner had authority to appoint fresh days, and to direct another advertisement to be inserted. *In re Stringer*, 37 L. O. 336.

TENDER TO OFFICIAL ASSIGNEE.

“*Semble*, that the offer of a cheque on a banker at a town where the estate has no banker, is not a proper tender by a creditors' assignee to the official assignee. *Exparte Cunliffe, in re Archer*, 1 De Gex, 408.

TRADER DEBTOR'S SUMMONS.

Insufficiency of affidavit.—Waiver.—A trader summoned under the statute 5 & 6 Vict. c. 122, is bound to make any objection to the affidavit of debt upon the return of the summons, and if not taken at that time it is a waiver of the objection.

An objection to an affidavit on which the summons against a trader is founded, comes too late when the trader appears to dispute the adjudication under the 5 & 6 Vict. c. 122, s. 23. *In re Anderson*, 36 L. O. 313.

TRADING.

1. *Cowkeeper.*—A farmer in the Isle of Thanet, occupying two farms, containing together 200 acres, kept five cows, four of which were Alderneys, and seven horses, and no other stock: *Held*, that his selling the milk of the cows regularly to a retail dealer in Margate, who paid for it on an average 30s. a week, did not render him subject to the bankrupt laws as a cow-keeper. *Exparte Dering, in re Cramp*, 1 De Gex, 398.

2. *Leasehold building ground.*—*Quere*, whether the taking a lease of land and building houses thereon is a trading within the meaning of the Bankrupt Laws. *Exparte Stewart, in re Stewart ; Sloper, respondent*, 37 L. O. 434.

TRANSFER OF STOCK.

Out of jurisdiction.—Where a stock legacy bequeathed to the bankrupt had been transferred into the names of the official assignee and the creditor's assignee, and the former survived the latter, and left the country, and became bankrupt: *Held*, that the Court might, under the 6 G. 4, c. 16, s. 29, on the petition of the new official assignee of the original bankrupt served upon the bank and the assignees of the former official assignee, direct the funds to be transferred to the Accountant in Bankruptcy, and that a petition under Sir Edward Sugden's Act, was unnecessary. *Exparte Pennell, in re Sustenance*, 1 De Gex, 566.

TRUST MONIES.

Breach of trust.—Construction of will.—A testator directed that it should be lawful for his wife to retain in her hands and employ any sums not exceeding 6,000*l.*, in carrying on the trades in which he might be engaged at his decease, and he appointed his wife and his son executrix and executor. The widow carried on the testator's trade, taking the son into partnership, and the monies received were placed with the bankers to their joint account: *Held*, on their bankruptcy, that the employment of 6,000*l.* of the assets in the trade so carried on, was authorised by the will, and gave no right of proof in competition with the joint creditors, and that the circumstance of the son being taken into partnership made no difference. *Exparte Butterfield, in re Butterfield*, 1 De Gex, 570.

Case cited in the judgment: *Exparte Garland*, 10 Ves. 110.

VENUE.

See Changing Venue of Fiat ; District Courts.

VOLUNTARY BOND.

Proof.—Proof of three bonds, executed in lieu of a bond for which the consideration was a promise to the father on his death-bed, ordered to be admitted by the Commissioner. *Exparte Hookins, in re Gundry*, 37 L. O. 337.

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SATURDAY, JULY 21, 1849.  
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ADMINISTRATION OF JUSTICE IN THE METROPOLITAN DISTRICTS.

[AMENDED BILL.]

As usual towards the close of the Session, the work of legislation proceeds with a rapidity which strikingly contrasts with the dilatoriness marking its progress at an earlier period of the Session. When the month of July arrives, it becomes no light task to obtain even a general acquaintance with the nature and objects of the various measures before parliament; and the labour is not diminished by the circumstance, that the changes made in the course of legislation are frequently of so sweeping a character as to render it extremely uncertain whether a bill, perused at an advanced stage, has the slightest resemblance—either in principle or detail—to that issuing from the parliamentary press under the same title, at an antecedent period.

The Bill laid on the table of the House of Commons, just before the Easter recess, by the Attorney-General and Solicitor-General, to facilitate the Administration of Criminal Justice in the Metropolitan Districts, affords an instance—and not a singular one—of the complete metamorphosis to which measures of the greatest importance are subjected in their passage through the parliamentary crucible. This bill, when read a second time and printed, in the first week of April, consisted of five clauses,^a in addition to those which are merely formal. In the bill printed as amended by the Select Committee,^b we find four out of the five original clauses absolutely struck out, and the

fifth, which was the least important, considerably changed, whilst seven new sections are added. The bill now before parliament differs as much in substance and effect, as it does in form and magnitude, from that originally introduced under the sanction of the Law Officers of the Crown, and to which we then directed attention. It is undoubtedly, in some respects, an obvious improvement upon the anomalous and undigested provisions thrown, in the first instance, into the shape of a bill; but a cursory consideration of the new measure produced by the Select Committee will suggest to any one familiar with the subject, that much has been overlooked or imperfectly considered, and that the public are entitled to some guarantee for the success of such an experiment as that now proposed to be tried.

Under the existing law, as our readers are aware, the system of procedure in criminal cases, which are not the subject of summary adjudication, is by indictment or upon the inquisition of a coroner's jury, and an indictment may be preferred at the instance of any party who considers himself aggrieved, with or without previous investigation before a magistrate. By the bill now before us, it is proposed, after the 1st January next, to abolish the procedure by indictment in all cases within the Metropolitan Police Districts and the districts falling within the jurisdiction of the Central Criminal Court under the Act 4 & 5 Wm. 4, c. 36, which comprehends the county of Middlesex, the city of London, and the most populous parts of the counties of Essex, Kent, and Surrey. Within the prescribed limits, Grand Juries are to be dispensed with altogether, and no criminal charges, with some inconsiderable exceptions, are to be preferred or tried without the sanction and approval of one or

^a Printed in *extenso*, Leg. Obs. vol. 37, p. 466.

^b As ordered by the House of Commons, 26th June, 1849.

more magistrates, after previous investigation. In the excepted cases, which only comprehend charges in respect of escapes, defamatory libels, and common nuisances, (not including keeping disorderly houses,) the leave of the Court at which the charge is intended to be tried must first be obtained, upon application founded on affidavit, and after notice.

Assuming that all the changes proposed to be made are expedient and desirable, it must be admitted that they are changes involving principles of the utmost importance, materially affecting the administration of criminal justice, and imperatively demanding the exercise of great caution and practical knowledge in the details. How far these qualities are exhibited in the bill as at present framed, our readers shall have an opportunity of judging for themselves :—

The first section enacts ; “ That the Grand Jury shall not be summoned to attend at the Central Criminal Court, or at any session of the peace holden within the City of London or the Metropolitan Police District ; and the proceeding by indictment at such Court and every such session shall be and the same is hereby abolished, and all charges which can be or may be tried at the said Court, or at any such session, shall be tried at such Court or session respectively upon information filed according to the provisions of this act.”

It will be observed that this clause deals summarily with two matters perfectly distinct and independent,—the Grand Jury system, and the procedure by Indictment. The one has been discussed, considered, and, it may be, condemned by many, who never dreamt that it was necessary to interfere with the other. As a substitute for the Grand Jury system, it is proposed to provide :—

“ That no charge (except charges in respect of escapes, defamatory libels, or common nuisances, other than the keeping of bawdy houses, gaming houses, or other disorderly houses) shall be preferred or tried at the Central Criminal Court, or at any session of the peace holden within the City of London or the Metropolitan Police District, unless the charge shall have been previously made and investigated before a justice or justices of the peace in the manner prescribed by law with respect to persons charged with indictable offences, nor unless the person accused shall have been committed to or detained in custody to take his trial, or shall be bound by recognizance to appear to take his trial, in respect of such charge : Provided always, that if the charge be made and investigated before one justice only, and such justice shall refuse to commit or detain the person accused, or to bind him to ap-

pear to take his trial, such justice shall (if required so to do) order the party to be detained till he be taken before two justices at the least, or shall bind him by recognizance to appear before two justices at the least, and such last-mentioned justices shall proceed to investigate the charge in the same manner in all respects as if the same were made or required to be made before them in the first instance.”

It may be noticed that this clause does not provide to *what* justices the appeal shall be made, if the justice first applied to refuses to commit or bind over the accused to appear for trial. For anything that appears, the justice refusing to commit or bind over may be one of the justices called upon to investigate the charge upon appeal. On the other hand, rendering it imperative upon a justice before whom a trumperty or unfounded charge is made, to detain or bind over the accused to appear before two justices, is to subject an innocent party, in many cases unnecessarily, to vexatious annoyance and hardship.

The course of proceeding proposed to be established with respect to charges of a *quasi* criminal nature, appears to be as inconvenient as it is novel. It is intended to enact :—

“ That charges in respect of escapes, defamatory libels, and common nuisances, other than the keeping of bawdy houses, gaming houses, or other disorderly houses, may, by leave of the Court at which the charge is intended to be tried, be tried at the Central Criminal Court or any such session as aforesaid, although the same may not have been previously made or investigated before any justice or justices of the peace, and applications to the Court for that purpose shall be made *upon affidavits* stating the facts of the case, and the Court to whom any such application is made may, if such Court shall think fit, require the person by whom the charge is preferred to deliver to the clerk or other proper officer of the Court a recognizance, in such sum as such Court shall direct, conditioned to prosecute the charge with effect, and to abide such orders as the Court shall direct : provided always, that no such leave shall be granted unless, six clear days before application for the same, notice of such application shall have been given to the accused.”

In the cases comprehended in this clause the course proposed is, that six days' notice of application to the Court for leave to proceed to trial must be given to the accused, in the first instance, and then an application is to be made to the Court to authorize the case to be tried, which application must be founded upon affidavit. It may be presumed that, as it is incumbent upon the prosecutor to give notice of the application,

it is intended that the accused shall also be heard on affidavit, so that there will be a preliminary trial by the Court on affidavit in anticipation of a trial by jury. If the application to the Court is intended to be *ex parte*, such a course of procedure is still more objectionable.

By the clause, marked C., it is proposed to enact :—

"That no person who shall have been committed to take his trial, or shall have been bound by recognizance to appear to take his trial, or against whom any detainer shall have been lodged to take his trial, at the Central Criminal Court, or at any such session of the peace as aforesaid, during any sitting of such Court or session, shall be tried at the sitting during which he shall have been so committed, detained, or bound to appear as aforesaid."

The effect of which will be, that a party charged with a trivial or a grave offence, at the commencement of a Session, however desirous to be tried, will have to remain in custody, whether he be innocent or guilty, until the arrival of the next Session, it may be, to the utter destruction of his business and prospects, and with a certain increase of the county rates.

By the next clause, marked D., the justice before whom any charge is made against a person already in custody, is authorised to issue his warrant to the gaoler in whose custody such person is, commanding the prisoner to be brought before such justice to be dealt with according to law. So far the clause appears to be reasonable and intelligible, but at the conclusion these words are added :—

"And every person removed by virtue of any such warrant shall be deemed to be removed by virtue of a writ of *habeas corpus*, and shall be dealt with in the same manner in all respects as if he had been actually removed by virtue of that writ."

Why it should be expedient to require a justice to determine upon the legality of the original detention of a prisoner brought before him, perhaps on a totally different charge, as upon a writ of *habeas corpus*, we are at a loss to conceive.

The only section of importance in the amended bill, also found in the original, is that (printed *ante*, vol. 37, p. 467,) which directs that, in lieu of an indictment, an information shall be filed by the officer of the Court against any person committed or bound to take his trial at such Court; and it is proposed to enact, that no objection shall be allowed to such information which

would not be allowed against an indictment found by a Grand Jury, and also—

"That no such information shall be quashed, vacated, or set aside, nor shall any person charged thereby be acquitted, by reason that the offence therein charged differs in its legal definition from the offence specified in the commitment or detainer, or for which he was held to bail, *provided such information be applicable to the facts appearing upon the examinations returned to the Court.*"

By a subsequent clause, the privilege of the Attorney-General to file *ex officio* informations, and the jurisdiction of the Court of Queen's Bench, is expressly preserved.

Every one with practical experience is aware that very difficult questions of law frequently arise in prosecutions for perjury, and it has long been held that the justices at Sessions have not jurisdiction in such cases. It is now proposed, however, to enact—

"That the justices of the peace at any sessions of the peace holden within the City of London or Metropolitan Police District shall and may try any person for perjury or subornation of perjury, or for making or suborning any other person to make a false oath, affirmation, or declaration punishable as perjury or as a misdemeanor, any statute or usage to the contrary notwithstanding."

The necessity or expediency of this, as well as of many other of the proposed alterations, is not so obvious as to satisfy us that they should be adopted, without more discussion and consideration than the public and the profession have yet had an opportunity of bestowing upon them. It is desirable, at all events, to know, whether the measure in its present shape has the sanction and concurrence of the Law Officers of the Crown, under whose auspices, the very different bill, under the same title, was at first launched.

SMALL DEBTS' ACT AMENDMENT.

THE attempt to extend the jurisdiction of these local Courts from 20*l.* to 50*l.* has been very properly negatived. It does not appear that the Attorney-General intended to enlarge the jurisdiction as to its *pecuniary* amount; but he endeavoured to carry a clause for extending most grievously the *territorial* jurisdiction of the Courts, so as to render it necessary for every plaintiff, with his witnesses, at whatever distance, to follow his debtor to his own district. This would have been so intolerable that it was strongly opposed, and the clause abandoned.

It will remain, therefore, to plaintiffs who reside more than 20 miles from the defendant to resort to the Superior Courts, if they think proper. So far so good.

But the mischief still remains of depriving the suitors, whether plaintiffs or defendants, of the power of employing a respectable practitioner, by the fee for attendance being confined to 10s., or at the most to 15s., for attending the Court, including the previous advice and preparations for the trial.

The clause in the existing act which requires the leave of the judge to be obtained by counsel or attorney before they can be heard still continues unaltered. How inconsistent this with the recent power given to every prisoner in the most petty case to be heard by counsel!

The clause still remains, also, in the new bill, for taking away the privilege of Attorneys who are compelled to attend the Superior Courts from suing in those Courts according to their ancient rights, which were granted for the advantage of their clients. But it seems that in every way the profession is to be sacrificed, without even the consolation of effecting any public good.

Again, in no case, or under any restrictions, can an appeal be made from the decisions of the County Court judge.

The advantages which are supposed to have resulted from these Courts, we are persuaded are grossly exaggerated, and the evils kept out of sight. The truth is, that the great multitude of cases in the County Courts were equally well disposed of in the Courts of Request; and in fact, in all the undisputed claims the suitors derive no increased benefit whatever, and pay a much larger expense; whilst a great proportion of litigated questions are abandoned from the trouble, inconvenience, and loss of time in conducting the proceedings without professional assistance.

BANKRUPT LAW CONSOLIDATION BILL.

THE Select Committee of the House of Commons have not yet made their report upon this bill, although, we are informed, that several witnesses have been examined and much time occupied in its discussion. It seems, the Attorney-General has submitted to the Committee a draft of what is called a "corrected" bill, making such extensive changes in the measure sent down from the Peers, that the Lords may have

some difficulty in recognizing the measure they produced. If the changes suggested by the Attorney-General should be adopted by the House of Commons, there is little chance that the bill will obtain the Royal assent this year. The present state of the Session, and the public business depending in Parliament, renders it impossible that alterations so extensive and important can obtain the attention and consideration to which they are entitled, during the few weeks that remain before the prorogation. Indeed, anxious as the commercial and trading classes undoubtedly are to see a bill for the consolidation and amendment of the Law of Bankruptcy in actual operation, we apprehend they would prefer that the subject should stand over till next Session, rather than that a mutilated and imperfect measure—which must inevitably be again altered—should now become the law.

At the moment we write, we cannot ascertain that the "corrected" version of the bill by the Attorney-General has yet been printed, and are therefore unable to announce, with anything like precision, the scope of the alterations proposed by the learned gentleman.

NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

[The Statutes of this Session printed in the last and the present Volumes, are as follow:—

- Buckingham Assizes, vol. 37, p. 408.
- Inclosure of Commons, vol. 37, p. 408.
- Appointment of Overseers of Poor, vol. 37, p. 448.
- Law of Larceny Amendment, vol. 37, p. 471.
- Annual Indemnity, vol. 37, p. 489.
- Petty Sessions in Counties and Boroughs, p. 78, *ante*.
- Maintenance of Poor out of Workhouses, p. 101, *ante*.
- Costs of Distraint for Highway Rates, p. 127, *ante*.
- Defective Powers of Leasing, p. 187, *ante*.]

SHERIFF OF WESTMORELAND.

12 & 13 VICT. C. 42.

An Act to provide for the Execution for One Year of the Office of Sheriff in the county of Westmoreland. [13th July, 1849.]

This act recites, that Henry Earl of Thanet, deceased, was in his lifetime and at the time of his death Hereditary High Sheriff of the county of Westmoreland; that he died on or about the 12th day of June, 1849, without issue: And it is alleged that he duly made and published his last will and testament in writing, bearing date the 21st day of December, 1848, whereby he devised and bequeathed the said office of

sheriff to one Richard Tufton for life, with divers remainders over: And doubts have arisen whether the said office of sheriff passed by the said will, or whether the same became on the death of the said Henry Earl of Thanet vested in his said heir or heirs at law, or whether the same became escheated to the Crown; and such doubts and rights cannot conveniently be settled and ascertained within the time necessary for executing and performing the said office of sheriff within the said county: And it is necessary, for the administration of justice within the said county of Westmoreland, that a sheriff for the said county should forthwith be appointed until such doubts and rights shall be settled and ascertained: It is therefore enacted, That it shall and may be lawful for the Queen to nominate and to appoint, in such manner and form as is provided by an act 3 & 4 W. 4, c. 99, such person to be sheriff for one year of the county of Westmoreland as she shall by the advice of her council think fit; and such person so to be nominated and appointed shall hold, use, and execute the said office of sheriff within the said county of Westmoreland during one year from the date of such appointment, or for any shorter period, in case her said Majesty shall by an order in council so order and direct, and upon taking the oath of office by the said act prescribed shall from thenceforth have and exercise all powers, privileges, and authorities whatsoever heretofore usually exercised and enjoyed by the sheriff of the county of Westmoreland, or any other sheriff, now or hereafter appointed under and by virtue of the said act, and shall be subject to the same duties and liabilities as the sheriff of the county of Westmoreland has hitherto been subject and liable to, and to all the liabilities imposed upon sheriffs in England and Wales by the said recited act.

2. That it shall and may be lawful to and for her said Majesty, by any order in council to be hereafter made, to order and direct that from and after a certain day to be therein named all the powers, authorities, rights, privileges, and liabilities by the said recited act or this act conferred or imposed upon the said person so to be nominated and appointed as aforesaid shall from and after such day cease, determine, save and except that the said sheriff so to be nominated and appointed as aforesaid shall be liable and amenable to all such suits, actions, and proceedings, and to make all such returns, as any other sheriff for any other county of England or Wales is now subject or liable to.

3. That, subject only to the power by this act professed to be given to her Majesty to appoint a person to the office of sheriff of the county of Westmoreland for one year as aforesaid, nothing herein contained shall prejudice or affect the title in her Majesty, her heirs or successors, in respect to the said office, or the title, right, or interests of any person or persons claiming or to claim, by descent, devise, or otherwise, the said office of sheriff of the county of Westmoreland.

NOTICES OF NEW BOOKS.

The New Chancery Practice, comprising all the Alterations effected by the recent Orders and Statutes, with Practical Directions, Forms, &c. By THOMAS H. AYCKBOURN, Esq., Barrister-at-Law, and HUBERT AYCKBOURN. Third edition. London: H. Butterworth. Pp. 548, Appendix, 192.

THIS is an improved and much-enlarged edition of the original work, the success of which has induced the first author and his learned colleague to extend their labours, and comprise in the present volume several additional subjects, namely, the practice with respect to restraining orders, stop orders, the investment of monies, and the payment of trust funds into Court. They have also detailed the practice in the Masters' Offices upon sales, the production of documents, and upon inquiries as to heirs-at-law and next of kin. The Appendix of Precedents has also been enlarged, and now contains the ordinary forms required in the prosecution of inquiries before the Master.

The recent General Orders, with the cases upon their construction, have been collected, and the work will doubtless be useful to the practitioner in all ordinary cases, and will materially assist the student, though it cannot supersede the larger works of Mr. Daniel and Mr. Smith.

The volume is divided into four parts. The First Part treats of the ordinary proceedings in a suit in Chancery up to the time of the decree, comprising:—

1st, The commencement of a suit:—1. The bill. 2. Subpoena to appear. 3. Appearance by default.

2ndly, Plaintiffs' proceedings in default of answer:—1. Process of contempt. 2. Bill *pro confesso*. 3. Traversing note.

3rdly, The defence:—1. Appearance. 2. Answer. 3. Demurrer. 4. Plea. 5. Disclaimer.

4thly, The plaintiffs' proceedings after answer:—1. Exceptions to answer for insufficiency. 2. Replication.

5thly, Evidence:—1. The nature of evidence. 2. Interrogatories. 3. Examination of witnesses. 4. Subpoena for witnesses. 5. Publication.

6thly, The hearing and decree, &c.:—1. Setting down the cause. 2. Subpoena to hear judgment. 3. The brief, &c. 4. The hearing. 5. The decree.

Having thus arranged the ordinary proceedings in a suit, the authors, in the Second Part, treat of particular proceedings in a suit.

1st, Of particular bill:—1. Bill of partition. 2. For specific performance. 3. Foreclosure. 4. Interpleader. 5. To perpetuate testimony. 6. For discovery. 7. Revivor. 8. Supplemental. 9. Review. 10. Cross bill. 11. Information.

2ndly, Particular writs, &c.:—1. Injunctions. 2. *Ne exeat regno*. 3. Distringas on stock. 4. Restraining orders.

3rdly, Interlocutory proceedings:—1. Motions. 2. Petitions. 3. Affidavits.

4thly, Incidental proceedings:—1. Dismissal of a bill. 2. Staying proceedings. 3. Scandal and impertinence. 4. Production of documents. 5. Further directions. 6. Costs.

5thly, Proceedings directed by the Court:—1. Issue. 2. Action at law. 3. Special case.

6thly, Re-hearings and appeals:—1. Re-hearing and appeal in general. 2. Appeal to the Lords.

7thly, Proceedings in the Accountant-General's office:—1. Payment and transfer into Court. 2. Payment and transfer out of Court. 3. Investments. 4. Sale of stock. 5. Carrying over. 6. Stop orders.

The Third Part treats of proceedings in the Masters' Offices.

1st, The ordinary proceedings:—1. Of proceedings generally. 2. Referring the suit. 3. Warrants. 4. Evidence. 5. Interrogatories. 6. Examination. 7. The report.

2ndly, Particular proceedings and inquiries:—1. Sales. 2. Accounts. 3. Debts. 4. Assets. 5. Production of documents. 6. As to heirs at law and next of kin.

The Fourth Part relates to particular parties in a suit, viz.:—1. Infants. 2. Receivers. 3. Paupers. 4. Solicitors.

This last head "*Solicitors*" is inaccurately placed as the 4th section in the chapter on "particular parties in a suit." It should have formed a separate chapter consisting of the following sections:—1. Service under articles. 2. Admission. 3. Certificate. 4. Delivery of Bill. 5. Taxation, &c. Within the compass of twenty-four pages a concise statement is given upon these several parts of the law relating to solicitors.

EXEMPTION OF BUILDING SOCIETIES FROM STAMP DUTIES.

A CASE recently decided in the Court of Common Pleas,—*Walker v. Giles and another*,—with reference to securities given for loans made by benefit building societies, established under the protection of the statute 6 & 7 Will. 4, c. 32, has excited very general attention amongst professional men and others interested in the well-being of these, if properly conducted, certainly very useful associations. An authentic report

of the case has just been put forth by Mr. *Scott*, the well-known reporter, in a conveniently accessible form.*

This decision will, we trust,—notwithstanding the doubt sought to be cast upon it by one of our contemporaries,—finally settle a point upon which much contrariety of opinion has hitherto been entertained, viz., whether a mortgage deed given by a borrowing member to the trustees of a building society, is exempted from stamp duty.

The ground upon which it was in that case sought to establish the exemption, was this:—The 37th section of the Friendly Societies' Act, 10 Geo. 4, c. 56, enacts,

"That no copy of rules, power, warrant, or letter of attorney, granted or to be granted by any person or trustee of any society established under this act, for the transfer of any share in the public funds standing in the name of such trustee, nor any receipt given for any dividend in any public stock or fund, or interest, of exchequer bills, nor any receipt, nor any entry in any book, or receipt for money deposited in the funds of any such society, nor for any money received by any member, his or her executors, administrators, assigns, or attorneys, from the funds of such society, nor any bond nor other security to be given to or on account of any such society, or by the treasurer or trustee or any officer thereof, nor any draft or order, nor any form of assurance, nor any appointment of any agent, nor any certificate or other instrument for the revocation of any such appointment, nor any other instrument or document whatever, required or authorized to be given, issued, signed, made, or produced, in pursuance of this act, shall be subject or liable to, or charged with, any stamp duty or duties whatsoever."

The last section of the Building Societies' Act, 6 & 7 Will. 4, c. 32, recites, that

"Certain societies, commonly called building societies, have been established in different parts of the kingdom, principally among the industrious classes, for the purpose of raising, by small periodical subscriptions, a fund to assist the members thereof in obtaining a small freehold or leasehold property, and it is expedient to afford encouragement and protection to such societies, and the property obtained therewith." It then proceeds to enact, "that it shall and may be lawful for any number of persons in Great Britain and Ireland to form themselves into and establish societies for the purpose of raising, by monthly or other subscriptions of the several members of such societies, shares, not exceeding the value of 150*l.* for each share, such subscriptions not to

* The case of *Walker v. Giles and another*, decided in the Court of Common Pleas, in Trinity Vacation, 1849. By John Scott, of the Inner Temple, Esq., Barrister-at-Law. Spetigius and Farrance. Demy 8vo. Pp. 49.

exceed in the whole 20s. per month for each share, a stock or fund for the purpose of enabling each member thereof to receive out of the funds of such society the amount or value of his or her share or shares therein, to erect or purchase one or more dwelling-house or dwelling-houses, or other real or leasehold estate, to be secured by way of mortgage to such society until the amount or value of his or her shares shall have been fully repaid to such society, with the interest thereon, and all fines and other payments incurred in respect thereof," &c. And section 4 enacts "that all the provisions of the 10 Geo. 4, c. 56, 'An Act to consolidate and amend the Laws relating to Friendly Societies,' and also the provisions of the 4 & 5 Will. 4, c. 40, (to amend the 10 Geo. 4,) so far as the same, or any part thereof, may be applicable to the purposes of any benefit building society, and to the framing, certifying, inrolling, and altering the rules thereof, shall extend and apply to such benefit building society, and the rules thereof, in such and the same manner as if the provisions of the said acts had been herein expressly re-enacted."

The combined operation of these several provisions, it was insisted, on the one hand, exempts from stamp duty all securities given to or on account of benefit building societies,—that is, all such securities as those societies are authorized to take, *ex concessis*, including mortgages.

On the other hand, it was insisted,—first, that the *only* exemption from stamp duty in favour of building societies, is that which is contained in sect. 8 of the 6 & 7 Will. 4, c. 32, which enacts, "That no rules of any society, or any copy thereof, nor any transfer of any share or shares in any such society, shall be subject or liable to or charged with any stamp duty or duties whatsoever,"—secondly, that the 4th section of the 6 & 7 Will. 4, c. 32, only intended to incorporate into that act such of the provisions of the 10 Geo. 4, c. 56, and 4 & 5 Will. 4, c. 40, as had reference to the "framing, certifying, inrolling, and altering the rules" of the society,—thirdly, that, at all events, the exemption was limited by the subsequent provision of the 3 & 4 Vict. c. 73, s. 1, to transactions where the sum which is the subject of the security shall not exceed 200*l*.

The Lord Chief Justice, in delivering the judgment of the Court,—after referring to the statutes,—says,

"Reading the 37th section of the 10 Geo. 4, c. 56, as incorporated into the 6 & 7 Will. 4, c. 32, so far as applicable, it seems to us to exempt from stamp duty all securities given for the purpose of carrying the last-mentioned act into effect. * * * It has, however, been insisted that the 3 & 4 Vict. c. 73, s. 1, which limits the exemption from stamp duty

in the case of friendly societies, to transactions where the sum to be assured to any individual shall not exceed 200*l*., has the effect, not only of diminishing the exemption as regards friendly societies, but also that of restricting it to the like extent in the case of building societies. We think that statute has no such effect. The exemption in the 10 Geo. 4, c. 56, s. 37, is, by the 6 & 7 Will. 4, c. 32, s. 4, incorporated in the latter act, as if it had been therein expressly re-enacted,—which would not be the case if it were to be held to be abrogated by the passing of a subsequent act having no such object in view."

So decidedly were the Court of opinion, that this immunity from stamp duty did exist, that, although they took time to consider other points that arose in the case, they did not see fit to allow *that* question to remain for a moment in doubt.

The second ground urged for the plaintiff, in *Walker v. Giles*, clearly is not a sound one; for, it would exclude societies established under the 6 & 7 Will. 4, c. 32, from many of the beneficial provisions of both the prior statutes, which no one can for a moment doubt the legislature meant to extend to them; amongst others, from the provision in the 4 & 5 Will. 4, c. 40, s. 8, for reinstating a member who has been improperly expelled,—from that in section 10, enabling a member to be called as a witness (as *Leaver* was in the principal case) in any proceeding respecting the property of the society,—and from that in section 12, enabling executors, &c., of deceased officers of the society to pay money due to the society before any other debts. The fallacy of the argument, indeed, is obvious from the fact that the Building Societies' Act, 6 & 7 Will. 4, c. 32, would, but for the referential incorporation therein of all these and other essential provisions of the two former acts, be altogether destitute of the requisite machinery for carrying it into effect. And the circumstance of the 6th section of the statute providing that nothing "herein contained" shall authorize any benefit building society to invest its funds in any savings' bank, moreover, presents a conclusive answer; for, it evidently refers to the 9th section of the 4 & 5 Will. 4, c. 40, which enables the trustees of friendly societies to invest their funds, to any amount, in savings' banks,—thus assuming, that, but for such express enactment, the 9th section of the 4 & 5 Will. 4, c. 40, would have become part and parcel of the 6 & 7 Will. 4, c. 32, by force of the provision contained in sec. 4. The question is thus treated in an opinion lately given by one of the most eminent conveyancers of the day:—

"I am of opinion that, as two out of three species of documents expressly exempted from the payment of stamp duties by the 6 & 7 W. 4, c. 32, are not the subject of exemption under the 10 Geo. 4, c. 56, and as the provision contained in the latter act with reference to stamp duties was sufficiently comprehensive in itself to exempt from the payment of the duty any mortgage security which might be taken by a society coming within the operation of the latter act, the exemption contained in the 8th section of the 6 & 7 Will. 4, c. 32, does not deprive building societies of the benefit, previously extended to them by the 4th section, of the more general exemption contained in the 10 Geo. 4, c. 56; and that, consequently, a mortgage security given to a building society for the above purpose is exempt from stamp duty."

Another point involved in *Walker v. Giles* was, as to the effect of the words of demise that are not infrequently found at the end of deeds of this description. As to this, the ultimate judgment of the Court of Common Pleas is highly important; and we regret that our limited space precludes us from inserting it here.

The whole case, as published by Mr. Scott, is well worthy of an attentive perusal. The name of that gentleman is a sufficient voucher for the accuracy of the report.

It is foreign from our present purpose to consider whether the doubt thrown out by the Lord Chief Baron, and by Mr. Baron Parke, in *Cutbill v. Kingdom*, 1 Exchequer Reports, 494, is well founded; or, in other words, whether the preamble of the 6 & 7 Will. 4, c. 32, sufficiently indicates the real object the legislature had in view, viz., the encouragement and protection of societies amongst the industrious classes, "for the purpose of raising, by small periodical subscriptions, a fund to assist the members thereof in obtaining a small freehold or leasehold property." That question will, no doubt, ere long be presented for a judicial decision.

One argument, and perhaps the strongest that has yet been urged in support of the imposition of stamp duty upon these securities, is, that "mortgages" are not mentioned in or contemplated by the Friendly Societies' Act, 10 G. 4, c. 56. The language of the 37th section, however, is large enough to embrace them, and there clearly would be no impropriety in friendly societies investing their funds in that species of security.

In the case of *Barnard v. Pileworth*, referred to in a note to the report of *Walker v. Giles*, it was intended to raise the question, whether a mortgage of property already in the possession of the borrower was within the provisions of the Building Societies' act.

It is understood that the entire subject is about to undergo material legislative alterations; and we learn, from a source upon which we can rely, that it is in contemplation altogether to withdraw, or at least very materially to limit, the exemption from stamp duty now enjoyed by these societies.

STATUS OF ATTORNEYS.

WE submit to our readers some more letters on this subject, and when our space shall be relieved from the pressure of parliamentary matters, we shall be ready to discuss the whole question according to the wishes of our correspondents, and for this purpose we invite further communications on the subject. For the present, we can only say that we do not agree in opinion with such of our correspondents as maintain that the attorneys and solicitors are held in low esteem by the public in general. Nor do we think that the evil of admitting ill-educated persons into the profession is so extensive as has been assumed. That the evil exists to a considerable extent, there can be no doubt, but we think it does not wholly account for the reflections cast upon part of the profession. There are several causes at work which produce an unpopular feeling towards the practitioners of the law, some of which, we apprehend, are unavoidable in any large community.

On the practice which is supposed extensively to prevail amongst attorneys, of taking articulated clerks without premium, and paying them a salary in consideration of their services, there is much to be said on both sides of the question. The attorney who has a managing clerk to whom he pays a liberal salary, and in order to save a large portion of it, takes him as an articulated clerk, without regard to his attainments or his prospects of success, does an injury both to the clerk and the profession, and in all probability will have reason to repent it in his own affairs. On the other hand, where a clerk possesses superior ability and adequate attainments, and has long served the attorney with zeal and integrity, it would be an illiberal restriction that should prevent the attorney from advancing the meritorious clerk to a position in which he may prove himself worthy of being admitted into the profession.

Men of the humblest origin are admitted to qualify themselves for the Church, but they must necessarily be men of learning. Why should they not be admitted into the Law? One of our most celebrated advocates was de-

sirous, indeed, that no man should be called to the Bar who had not 400*l.* a year of independent property. This was something more than the property qualification for the representative of a borough in parliament, and perhaps the one might be evaded as well as the other. It would seem, in these times, looking at the legislative proposal: not to pay solicitors more than one-half their bills until they have been taxed, that they ought to be *capitalists* of no small amount. Property may constitute some guarantee against misconduct by affording the means of redress, but the best test, both of moral fitness and intellectual capacity, are, or ought to be, placed in the hands of the Examiners, and the rest must be effected by a vigilant supervision over all cases of malpractice.

To the Editor of the Legal Observer.

SIR,—I have been much interested in the correspondence that has taken place in your journal upon the Letter of "An Attorney," and can only say that in my opinion nothing has at present been written that at all disproves "An Attorney's" assertions as to the social position of attorneys, nor the causes as stated by him for such position, which he states to be *unavoidable*. Although his letter is rather blunt and very plain spoken, still I think it is pretty correct on the whole. His remarks may not be palatable, but nevertheless may be true.

I agree much with the Law Review, and think that the plan suggested by the writer would tend greatly to elevate our profession; but still we ought to do something of ourselves to keep the profession select. I am a young attorney, of barely five years' standing, and have no wish to appear in public, and perhaps subject to the odium of a certain portion of my brethren for advocating the conservative opinions of "An Attorney," which do not appear to be very popular; but as it cost my family about 700*l.* before I could start for myself, besides having been expensively educated until eighteen, I think that I and those who enter the profession, under similar circumstances, have a right to expect such a profession to contain mostly men of enlightened and honourable views towards mankind at large, and not men who think only of how much they can get out of each unfortunate client or defendant with whom they may come into contact.

My old "governor" used to say to me that the best lawyer was the man who kept his clients out of law; and that an attorney ought to think of his client first, the opponent second, and himself last.

I think, Sir, that something ought to be, and must be, done by the elder members of the Law Society, to set us younger fellows the example, and I assure you that it will be eagerly followed. I should like to see a rule adopted that no articulated clerk (except son or

nephew) be taken by any attorney under a fee of 500*l.*, and that the profession, when appearing in Court, adopt a proper forensic costume. I express the sentiments of fifteen gentlemen of about the same standing as myself. A. U.

SIR,—It was not my intention to have intruded upon you again, but the very able letter of your correspondent, G. A., almost makes it necessary that I should say a word or two more. The question between G. A. and myself is, "whether attorneys as a class or as individuals stand in a good position with society at large." My position is that as a class they are not thought well of: G. A. thinks that it is only as individuals that is the case, but as a *class* attorneys stand well.

Now, Sir, just let us examine into this. As a class, the attorney is excluded from all offices and posts of honour. He cannot be a Magistrate; he cannot be a Judge of an Inferior Court; he cannot be a Commissioner in Bankruptcy or Insolvency or Master in Chancery; he is never, or very seldom, appointed Solicitor to any Government Board, those offices always being conferred on barristers; but how or why I have long tried to find out, seeing that attorneys and solicitors ought to be properly admitted; he is not allowed to plead at quarter-sessions—he is merely *permitted* to do so at County Courts—and he is excluded from all the Inns of Court.

It surely cannot be said that they are excluded as individuals; and there is no doubt that they are so excluded by society: and the only reason that suggests itself to me is, that improper parties get into the profession, whereby the profession becomes degenerated and vulgar, and that as a class they do nothing to distinguish themselves before the public. I am aware that amongst the older members of my branch of the profession, (and I am one), the idea of adopting the old-fashioned attorney robe is laughed at; but what is it that causes the briefless barrister to be treated with so much respect by the public, but the knowledge that he belongs to the law, such knowledge being obtained by his costume?

I think that we older members of the profession ought not to look to ourselves: we are safe. We do not require any further aid than we already possess; but do not our junior brethren require something to place them in a better position than they now stand? We ought not to say "our position cannot be affected—we are well known—and why should we trouble ourselves about such a matter?" I think it is our duty to do so; the young attorney is reluctant to push himself forward on such occasions.

As individuals, I think many attorneys are treated as gentlemen, but it is only as individuals they are so treated; the visiting and marrying into respectable families depends upon their individual worth. As to their evidence being received by Parliament, let me ask G. A. who it is that a Parliamentary Committee does not examine when requisite? and such Com-

mittees have received valuable information from journeymen of all sorts, and therefore it would be strange indeed if a Solicitor could not now and then also give valuable information.

I am afraid, therefore, that your very worthy correspondent, G. A., has not proved his position. I wish he had done so. I know and feel that my opinion is correct. Let any one attend any of the courts, he constantly hears and sees "*the attorney*"—that is the name he is called in a sort of sneering way—snubbed by barristers and some (I will not say all) of the judges, and those judges who have received most benefit from the attorneys. I maintain that at present the attorneys as a class do not hold a proper position in society; and I think that you, and your readers generally, will bear me out. AN ATTORNEY.

SIR—When I ventured a few days since to offer, through the medium of your valuable columns, a few remarks obnoxious of the tone of sentiment and reasoning of "*An Attorney*," I had not seen your notification that you had received two answers to his letter which you intended to insert in your next number. I rejoice, however, to perceive that you do not agree with "*An Attorney*." I believe every member of our profession whose opinion is entitled to any weight will know how to estimate a pseudo-gentility when attempted to be played off at a section of the profession, which, although it may have many sins to answer for, is in the mass every whit as much entitled in our land of freeborn men, to place its foot on the spoke of the ladder as the sensitive section of the thousand sovereign remedy. If we must have vulgar-minded men on the roll, give me them, pour l'amour de Dieu, with brains and without money, than with the pelf and without the brains. I do not, of course, intend the least personal reflection on "*An Attorney*," but I denounce the tendency of his argument.

G. A.

The following Letter is added to those on the Status of Attorneys, though it bears also on the question of the repeal of the *Certificate Duty* :—

SIR,—It appears to me that much unnecessary fuss is made about the trivial tax to which our profession is annually subject. My firm impression is, that its abolition will be anything but a boon to the profession at large, and I had much rather see the duty paid by those who enter the profession for the first few years of their career raised to 12*l.*, (the duty paid by the older members of it,) than see the tax itself done away with, or in the slightest manner diminished. If 12*l.* were paid by every member directly he took out his certificate, I am firmly of opinion that it would deter a great many persons from entering it, and those persons would be the men who now—and I am sorry to think there are a good many such, although, perhaps, they are but a drop in the stream—are the means of causing our profession to be so looked down upon by the community in general.

As the tone of your correspondents generally is opposite to mine, perhaps you would do me honour of inserting this in your valuable journal, as I think there are not a few of my brethren who will concur in my opinion.

A SOLICITOR OF ONE YEAR'S STANDING.

LAW OF TITHES.

EFFECT OF LORD TENTERDEN'S ACT.—
SALKELD v. JOHNSTON.

To the Editor of the *Legal Observer*.

I BEG to call your attention to an article in your contemporary the *Jurist* of the 5th May, on the effect of Lord Tenterden's Act, to which act you adverted in vol. 37, p. 127. In your first article on the subject, (vol. 36, p. 410,) you reported the questions submitted by the Lord Chancellor to the Barons of the Exchequer in the case as altered and amended from that previously submitted to the Court of Common Pleas. By that amendment the question in *Fellowes v. Clay*, 4 A. & E. 313, was imported into and submitted to the Barons of the Exchequer as a separate and distinct question, and as the primary question for consideration in disposing of the more narrow question that really and alone arises upon the pleadings in equity in *Salkeld v. Johnston*, 1 Hare, 198, upon which the judges of the Court of Common Pleas had been divided in opinion. In your article, vol. 37, p. 127, you stated more particularly the question that arises upon the pleadings in *Salkeld v. Johnston*, as distinguished from that in *Fellowes v. Clay*, and stated your reasons for considering that certificate from the Exchequer in *Salkeld v. Johnston* disposed of the question in that case, and which was first submitted to the judges of the Court of Common Pleas, but not of the question in *Fellowes v. Clay*, and which by an amendment of the case was so imported into *Salkeld v. Johnston*. As to the proviso annexed to the certificate from the Barons of the Exchequer upon the question in *Fellowes v. Clay*, viz., that all the tithes of all the titheable matters from time to time growing on the lands must be shown to have been during the whole of the period withheld adversely and under a claim as of right acquiesced in by the tithe owner, and upon the construction to be put upon such a proviso you referred to the judgment of the Court of Queen's Bench in *Tickle v. Brown*, 4 A. & E. 369. Since your last article, *Salkeld v. Johnston* has been reported in 2 Exch. R. 256; but no judgment has yet been delivered upon the certificate by the Lord Chancellor upon which the Tithe Commissioners reported to Sir George Grey their intention of acting and which intention they have since carried out. Your contemporary appears to suppose the questions in *Fellowes v. Clay* and *Salkeld v. Johnston* to be identical, and has further fallen into the error of supposing that the Lord Chancellor had submitted the question that arises in *Salkeld v.*

Johnston for the opinion of the judges of the Court of Queen's Bench.

The question in *Fellowes v. Clay* still appears to depend in substance upon the construction which is to be put upon the words in the 1st section of the act:—"Prescription and claim of or to any exemption from or discharge of tithes by composition real or otherwise," whether they are to be considered in a sound construction of the statute to have been used by the legislature in a strictly legal sense, or in a popular sense. The old rule of construction seems to have been, that the words of an act of parliament on a legal subject must be taken to have been used in a legal, and not in a popular sense, particularly when the act of parliament is to effect an alteration in the law and seriously to affect existing rights.

Mr. *Manisty*, in arguing the case for the plaintiff, the vicar in *Salkeld v. Johnston*, in the Exchequer, cited the resolution come to in *Riddle v. Napper*, 11 Rep. 14, where it was held, upon the 21st section of the 31 H. 8, c. 13, that under the words of that statute, "shall enjoy the same discharged of the payment of tithes in as large and ample a manner as the Abbots, &c., enjoyed the same at the time of the dissolution;" that lands as to which there was a mere nominal and imperfect, and not a legal unity of possession, were not exempt, though, as is there observed by Lord Coke, the words of the statute are not discharged, but discharged of payment only at the time of the dissolution; and Lord Coke there, in commenting upon that enactment, states the impossibility, as is done in substance by the Vice-Chancellor Wigram, and by the late Lord Chief Justice Tindal and Mr. Justice Cresswell, in *Salkeld v. Johnston*, of supposing that parliament could have intended to alter the law so as by innuendo to deprive parties of their property and vested rights.

R.

On the last day of Term, (12th June,) in the Court of Queen's Bench, The *Attorney-General* and *Peacock* for the Tithe Commissioners and their Assistant Commissioner Mr. *Rawlinson*, and Mr. *Manisty* for the plaintiff in *Salkeld v. Johnston*, the vicar of the parish of Crosby-cum-Eden, in Cumberland, appeared upon a rule obtained calling upon those parties to shew cause why a prohibition should not issue to the Tithe Commissioners and their Assistant Commissioner to prevent the latter from making his award for the parish, and the Tithe Commissioners from confirming such award until the suit of *Salkeld v. Johnston* should be determined.

The *Attorney-General* and *Peacock* contended that the only ground of prohibition was excess of jurisdiction; that, under the 45th section of 6 & 7 W. 4, c. 71, (the Tithe Commutation Act,) the Assistant Commissioner was empowered to determine the suit, supposing it to have been a suit touching the right to any tithes; but that the bill only prayed an account against the defendants, though the defendants,

it was admitted, had set up by their answers the right to the tithes, if it existed, to be in the rector. [Per *Patteson*, J. It is the account that gives the Court of Chancery jurisdiction, otherwise that Court could not entertain a suit involving the right to tithes.]

Manisty for the vicar. Either the suit does or does not prevent the making of the award, and the Assistant Commissioner may determine it. Take it either way, prohibition is to prevent excess of jurisdiction, and the remedy to compel the determination by the Assistant Commissioner of the suit must be by *mandamus*.

Knowles and *Unthank* in support of the rule. The award, when confirmed by the Tithe Commissioners, is under the act final and conclusive and binds the right, and, under the 50th section, it cannot be made until all suits and differences have been decided, and it was so held by all the four judges, who decided that the suit must be removed out of the way before the Assistant Commissioner could make his award, and the prohibition went to prevent the making the award until the suit was determined.

We understand that the Tithe Commissioners have since issued a notice for the 1st August, of their intention to determine the suit of *Salkeld v. Johnston*, so far as it prevents their making their award for commutting the tithes of the parish of Crosby-cum-Eden; and that the Lord Chancellor having been thereupon applied to on behalf of the defendants in the suit, has promised to send his judgment to the Registrar before the Court rises for the Vacation.

LAW ASSOCIATION,

FOR THE BENEFIT OF WIDOWS AND FAMILIES OF PROFESSIONAL MEN.

THE following is the Thirty-second Report of the Board of Directors to the Annual General Court, held on Thursday, the 10th May last. *F. N. Devey*, Esq., in the Chair.

"The Directors, in making their Annual Statement, have to report that the income of the Association has, in the preceding year, amounted to 1,220*l.* 5*s.*; and from the increased interest which of late years has been excited in favor of the Institution, they cannot but hope for a continued addition to those resources which are so essential to its well-being.

"The Directors have the gratification to announce the very handsome donation of 100*l.* 3 per cent. Reduced Annuities, by Mr. Henry Denton: an honourable proof of that gentleman's generosity, and a flattering testimony of his warm approval of the proceedings of the Association.

"The Life Subscriptions during the year have amounted to 81*l.* 18*s.*; which sum constitutes a portion of the balance in the hands of the Treasurers, and will, in pursuance of the Fifty-ninth Law, have to be added to the Capital Stock.

"The Directors, in referring to the Expenditure of the Association in the relief confided to their distribution, have to state that the sum thus applied amounts to 1,172*l.* 8*s.* Although the members at large will, no doubt, unite with the Directors in deeply lamenting the causes by which so heavy a demand on the pecuniary resources of the Association has been occasioned, they will, at the same time, congratulate themselves and the profession, that they have had the power of alleviating the wants of those who, unfortunately, required assistance.

"During the past year two instances have occurred of Petitions in respect of Deceased Members, the particulars of which afford a new proof of the value and utility of the Institution.

"These deserving objects of solicitude were personally known to some of the Directors. In one case, the husband had been generally considered to be in affluent circumstances; but, at his death, he left his widow and two young children almost entirely unprovided for, and the assistance afforded by the Board (although limited to the usual amount) was most salutary and efficient.

"Since the last Report, three of the permanent applicants of the primary class have died; and one having married, the annual expenditure has been thereby reduced by the amount of 140*l.*

"The daughters, however, of one of these persons have been placed on the primary list.

"In three other cases the Board have, under pressing circumstances, made some trifling additions to the customary allowances. In one instance, the Directors have returned to a Member who had been compelled, by adverse circumstances, to discontinue his subscriptions, the amount which in former years he had paid to the Society.

"By the Resolution of the Court in May last, the Board was authorised to expend 200*l.* for the purpose of relief in cases not falling within the rules relating to the families of Members; and, in consequence of this permission, they have expended in this species of aid the entire sum entrusted to them, thus making the amount allowed to Non-Subscribers' families, since the establishment of the Association, upwards of 3,100*l.*; and seven new cases of this latter description have come before the Board during the year.

"The cases of this description relieved during the last year amount to twenty-six in number, whilst the entire number on the books of those of the primary class is only nineteen.

"In consequence of the recent resignation of Mr. W. S. Jones, a trustee, it will devolve upon the members now assembled to appoint a successor; and, as the vacancy occasioned by the death of Mr. Brooks, in 1842, has not yet been filled up, another trustee will also have to be appointed in his stead. Into these names, jointly with those of Mr. Freshfield and Mr. White, the funds will have to be transferred. In bringing this subject to the attention of the General Meeting, the Directors beg to record

the high sense they entertain of the very useful services of Mr. Jones during the eleven years in which he has filled the office of trustee, and their regret at his resignation.

"No investments of Stock have been made since the last Meeting, the Directors preferring to take the sense of the General Court on that subject; but they are prepared to recommend that 200*l.* 3*½* per cents. be purchased.

"In conclusion, the Directors cannot but feel that the proceedings of the past year are well calculated to impress upon the minds of the supporters of the Society a strong feeling in favour of its continued usefulness; and the only reward they desire for their exertions in this work of charity, is the approbation of the Members at large, and general activity and zeal in promoting the interests of this truly benevolent institution.

(By order of the Board,
"JOHN MURRAY, Secretary."

REGISTRARS OF DEEDS (MIDDLESEX.)

THE following are the returns made by the Registrars of Deeds for the County of Middlesex to the House of Commons, upon the motion of Mr. *Walpole*, and ordered to be printed 13th June 1849.

FIRST REQUISITION.

Returns of the total amount of Fees received by the Registrars of Deeds in Middlesex, in each year from 1839 to the end of the year 1848; stating the rate of fees demanded and taken for the Registry of Memorials, and of the authority under which such fees are charged, and stating the application of such fees; distinguishing the amount paid for the expenses of the office, and the amount received by the registrars for their own use, and stating whether any and what duties are performed by them in person.

Amount of Fees for the Years

£	s.	d.	£	s.	d.
1840—2,822	2	0	1845—3,925	13	0
1841—2,991	13	0	1846—5,340	4	0
1842—3,052	10	0	1847—4,238	19	0
1843—3,304	6	0	1848—3,550	2	0
1844—3,732	1	0			

Disbursements for the Years

£	s.	d.	£	s.	d.
1840—1,124	19	10	1845—1,564	9	2
1841—1,198	18	6	1846—1,837	1	0
1842—1,206	3	9	1847—1,581	14	0
1843—1,255	9	7	1848—1,340	10	0
1844—1,523	12	8			

Emoluments of Registrars for the Years

£	s.	d.	£	s.	d.
1840—1,697	2	2	1845—2,361	3	10
1841—1,792	14	6	1846—2,503	3	0
1842—1,846	6	3	1847—2,657	5	0
1843—2,048	16	5	1848—2,209	12	0
1844—2,208	8	4			

It is to be observed that the fourth part of the aggregate amount to be received by the Queen's Remembrancer as one of the registrars

is accounted for by him to the public, and no part thereof appropriated to himself.

The fees taken for the registry of deeds are 7s. for memorials of 500 words, and 6d. for every 100 words exceeding that number. In this sum of 7s. is included 1s. for administering the oath of the due execution of deed, and 1s. for the certificate endorsed thereon of its registration.

The scale of fees prescribed by the act 7 Anne, c. 20, was altered, as the present registrars are informed, in the year 1768, but of the authority for such alteration they are ignorant, further than by the arrangement alluded to in the last return made from this office on the 18th of March, 1840.

Such were the recognized fees when they respectively were appointed registrars, and the same by custom have been received since the year before referred to.

The duties required of the registrars are not generally performed in person, but by deputy, as the act constituting the office provides for.

SECOND REQUISITION.

The Names of the Deputies and Clerks now employed in transacting the Business of the Office; of the Dates of their respective Appointments, and of the Amount of Salary or other remuneration annually paid to each, during the period of their employment.

Names of the Deputy Registrar and Clerks.—Dates of Appointment.—Average Remuneration Annually.

John Rigge, Deputy Registrar, Jan. 1825	} 650l
John Rigge, Chief Clerk, July, 1838	
John Thurston, Junior Clerk, Nov. 1840, 444l.	

In addition to the above the deputy registrar has two assistant clerks, receiving weekly salaries of 1l. 14s. and 1l. 12s., each paid by him out of his remuneration; and there are six copying clerks, who have weekly 30s. each, which is included in the general disbursements before-mentioned.

THIRD REQUISITION.

Account of the Sums expended in Rates, Taxes, and Repairs of the Office in each year for the last five years.

Rates, Taxes, and Repairs for the years ending
 1844, 21l. 2s. 4d.; 1845, 102l. 2s. 1d.; 1846, 80l. 17s. 3d.; 1847, 114l. 14s. 1d.; 1848, 89l. 12s. 5d.

FOURTH REQUISITION.

Copies of all Rules and Orders made by the Lord Chancellor and Judges for the better Management and Government of the Office, in pursuance of the act of 7 Anne, c. 20, and of any Record of the Arrangement referred to in the Return of the 18th March, 1840, for an Increase of the Fees allowed by that Act, as having been made in 1768, between the Registrars and some Attorneys of that time, and a Statement of the increased Facilities and Advantages derived by the Public, in return for the Increase of Fees thereby imposed upon them.

No rules or orders of either the Lord Chancellor or Judges, such as are here alluded to, were, as the registrars understand, ever made, nor is there in existence any record of the arrangement referred to in the Return made to the House of Commons on the 18th of March, 1840; neither have they any statement to offer in regard to the facilities and advantages derived by the public in return for the fees charged in the increased ratio, further than that the business of the office is now more expeditiously transacted than formerly, and much additional time and attendance conceded to the public to suit their wishes and convenience, and it is believed generally allowed by the profession that the system of doing business has been very materially improved.

FIFTH REQUISITION.

Statement of the Years during which the Registrars for time being kept up the Alphabetical Calendar required by the Act of all Parishes, Extra-parochial Places and Townships, within the County, referring to the number of every Memorial which concerned Hereditaments in every such Parish, Extra-parochial Place, or Township, and of the Time when and of the authority under which such Calendar was discontinued.

The number of years during which the alphabetical calendars required by the Act of 7 Anne, c. 20, were kept was eight, and the same were discontinued in the year 1717, for what reason the registrars now holding office are unprepared to state; but they assume that the alteration of names and subdivision of parishes, and creation of new ones, rendering it impracticable for the public with any degree of accuracy to search for incumbrances, was the cause.

H. W. VINCENT,
 Queen's Receiver and Register.
 JOHN RIGGE,
 Deputy Register and Chief Clerk.

SELECTIONS FROM CORRESPONDENCE.

COURT OF CHANCERY.

Who has not heard of the interminable delays and annoyances of a chancery suit occasioning the ruin of thousands? but who anticipated, overwhelmed as the Masters' offices are, that they should have committed to them all the proceedings under the "Winding-up Act" of last Session.

I hear that in some cases the inconvenience is quite intolerable, and that the result has been most unfortunate. In one office alone, in the winding-up of a north country bank, no less than 300 solicitors attended for the different parties.

Is it too late to alter the system and to leave the winding-up of the concerns to some other tribunal much less worked?

A SOLICITOR OF 50 YEARS.

OLD BAILEY PRACTICE.—LICENCE OF COUNSEL.

A very respectable solicitor in the city was recently called at the Old Bailey as a witness on a charge against a clergyman for obtaining 200l. on false pretences, and having sworn that *no person in particular* was debited in his bill delivered for his law charges, the prisoner's counsel (Mr. Newton) thought fit to make the observation that no person in Court would believe the witness.

It is well known that such is no uncommon practice in case of mortgage; but judge my

extreme surprise when the fact was that the bill so made out was actually *at that moment in the hands of Mr. Newton himself*. I do not venture to characterize such conduct, of which the Recorder intimated a very decided opinion. *Civis.*

[The name of the very respectable attorney on whom this ill-founded comment was made, has been communicated to us. It will be prudent, as well as just, that counsel should have sure ground for their animadversions. When so, they will, of course, do their duty. —Ed.]

RECENT DECISIONS IN THE SUPERIOR COURTS.

AND SHORT NOTES OF CASES.

Rolls' Court.

Grand Junction Canal Company v. Dimes.

May 1, 23, 1849.

JURISDICTION.—JUDGE INTERESTED IN SUBJECT MATTER OF SUIT.

Held, that where a judge has a co-ordinate jurisdiction with other Courts, he ought to do no judicial act in a cause in which he is interested, but allow it to be heard by another judge; but where the judge has a sole jurisdiction, and his declining to act would amount to a denial of justice, an order made by him ought not to be treated as void.

THIS was a motion, on behalf of the defendant, to discharge an order of the Lord Chancellor, dated Jan. 27, 1848, affirming the decree of the Vice-Chancellor of England respecting certain copyhold lands in Rickmansworth, Herts, over which the company's canal was made; and that the plaintiffs might replace in the hands of the registrars the sum of 20l. deposited by the defendant on presenting his petition, and also repay to him the sum of 65l. 10s. paid by him in pursuance of such order. It also prayed that the defendant might be at liberty to amend his petition of re-hearing and appeal by inserting the names of Boham and Martin, two defendants, and that the petition might be restored to the paper and be heard by the Master of the Rolls, assisted by two of the Common Law Judges. It appeared that the Lord Chancellor had some shares in the company, and the present application was therefore made on the ground that the proceedings before the Lord Chancellor were *coram non judice*, and therefore void, in consequence of his lordship having such interest in the subject-matter.

Daniel and *Peacock* in support of the motion; *Stuart*, *Turner*, *J. Parker*, *Buske*, and *Randall*, contra.

The Master of the Rolls said, that the defendant had alleged no grounds of error in the judgment of the Lord Chancellor, nor any special grounds for re-hearing, but merely contended that the plaintiffs were not entitled to the benefit of the judgment as his lordship was interested in the subject matter of the suit,

being a shareholder in the company, and that therefore, the order made was void. There was no question as to the validity and importance of the general rule, and it ought not to be departed from without necessity. There was no difficulty in acting upon it where there were several Courts of co-ordinate jurisdiction, but where the sole jurisdiction was vested in one judge, to act upon the rule might lead to a denial of justice. Every order made by the Master of the Rolls or Vice-Chancellors were subject to be re-heard and discharged or confirmed by the Lord Chancellor alone, and must be adopted before it would be deemed a final order. There must, therefore, be a denial of justice if the Lord Chancellor could not act in such a case. The defendant could not in the present case appeal without the Lord Chancellor's signature to the decree for the purpose of its being enrolled, and that act was not merely a ministerial, but was a judicial act. The defendant had properly abandoned the application for a commission to be issued by the Lord Chancellor to the Master of the Rolls and two other judges, inasmuch as his lordship had no authority to delegate to the Master of the Rolls the authority vested in him, although he was entitled to the assistance of the Master of the Rolls. The order of the Lord Chancellor, therefore, ought not to be treated as a nullity, and he should humbly advise the Lord Chancellor that the motion should be refused with costs.

July 11, 12, 13.—*In re Williams and others*—Order by consent.

— 14.—*Gosselt v. Vivian*—Stand over to July 21.

— 13, 14, 16, 17.—*Attorney-General v. Wiggston Hospital*—Reference to the Master to approve of charity scheme.

Vice-Chancellor of England.

In re Crickitt's Trust. April 27, 1849.

TRUSTEES.—PAYMENT OF DIVIDENDS.—MISTAKE.—COSTS.

Where trustees had apportioned the dividends becoming due after the testator's death,

and paid the residue to the legatees, Held, that they were entitled to be reimbursed the amount, together with the costs of this motion, but not of taking counsel's opinion, by which their mistake was discovered.

TESTATOR, John Crickitt, by his will, bequeathed 3,000*l.* East India Stock, and 8,000*l.* 3 per cent. consols to trustees, in trust to sell and invest the same in the funds, and to pay the dividends from time to time arising from the East India stock to his daughter, Letitia Sarah Halkitt for life, and of the 3 per cent. consols to his son Charles William Crickitt for life, and he bequeathed the residue to his nine grandchildren. The testator died 31st December, 1840, and the trustees apportioned the dividends from that day to the 5th January, when they were paid to the daughter and son, and paid the remainder into Court under the Trustee Act, and it was paid out to the residuary legatees. The trustees, however, upon taking counsel's opinion, discovered that the son and daughter were entitled to the whole of the dividends becoming due on January 5. This petition was therefore presented, and prayed that so much of the dividends as should be found due should be paid to them, together with the costs of these proceedings and of taking counsel's opinion.

Smythe in support of the petition.

The *Vice-Chancellor* said, that the trustees were to be allowed the sum so paid by mistake, together with the costs of these proceedings, but they could not be paid the costs of taking counsel's opinion, which had been occasioned by their own mistake.

July 12.—*In re Watkins*—Order on *ex parte* application for *habeas corpus* to bring up lunatic.

— 13.—*In re Whitehead, Ex parte Mayor, &c., of Liverpool*—Order for payment of costs to corporation.

— 13.—*Thomson v. Blew*—Injunction granted to restrain defendant from printing or selling the plaintiff's designs on calico.

— 13.—*In re Gellygare Charities*—Order confirming charity scheme without reference—the funds being small.

— 11, 14.—*Mornington v. Mornington*—*Cur. ad. vult.*

12, 14, 16, 17.—*Attorney-General v. Trevelyan*—*Cur. ad. vult.*

Vice-Chancellor Knight Bruce.

Hore v. Smith ; In re South Devon Railway Company's Act. June 12, 1849.

PETITION TO PAY MONEY OUT OF COURT. COSTS.

A petition to pay out money paid into Court under the 8 *Vict.* c. 18, s. 69, was in the cause and in the matter of the act : Held, that the company was only liable to pay the costs in the matter of the act, and not in the cause also.

THIS petition was presented in the cause

and in the matter of the company, and prayed that a sum of 360*l.* might be paid to the petitioner in part discharge of a large sum found due by the company to him, and that all reasonable charges and expenses of and incident to this application and consequent thereon, might be paid by the company to the petitioner and the parties entitled to the same. It appeared that the testator was possessed of leasehold premises in the parish of St. Thomas the Apostle, in Devon, which were held from the trustee of the Pit Estate, and that the company had taken the same for the purposes of their railway, in 1844 ; and that they had paid into the bank a sum of 360*l.* under the 8 *Vict.* c. 18, s. 69, at which the jury had assessed the damages. This petition also prayed that the company might be ordered to pay the costs of the defendants of the suit.

Messiter in support of the petition ; *Bour-dillon* for the company ; *G. Simpson* for a defendant.

The Court said, the costs would be paid as if the petition had been in the matter of the act of parliament only, and not also in the cause—the costs of defendants to be costs in the cause.

July 11.—*Attorney-General v. Dew*—Information dismissed for an account of rents and profits of charity estates.

— 12.—*Krehmer v. Ditchburn*—Order by consent.

— 12.—*Turner v. Maule*—Order on defendant to pay interest at four per cent. for four years on proceeds of stock to party entitled thereto.

— 13.—*In re Northern and Southern Connecting Railway Company*—Order for winding up.

— 13.—*In re Ipswich, Norwich, and Yarmouth Railway Company*—Order for winding up discharged with costs.

— 16.—*Fitton v. Booth*—Order for sale of part of estate for payment of costs of suit, as there was no personality.

— 16.—*Ex parte Gibson, In re Gibson*—Stand over.

— 16.—*Ex parte Sturges, in re Kernot ; Catlin, respondent*—Stand over to first day for bankruptcy causes in Michaelmas Term.

— 17.—*Kains v. Hertslet and the Metropolitan Commissioners of Sewers*—Injunction granted to restrain interference with plaintiff's land.

Vice-Chancellor Wigram.

In re Bedford Charities. July 7, 1849.

CHARITY SCHEME.—REFERENCE.—COSTS.

Petition by four parties on behalf of certain inhabitants of a town, for leave to appear before the Master on a reference for a charity scheme, refused with costs, on the ground that the Attorney-General sufficiently represented the inhabitants.

THIS petition was presented by four persons,

who stated that they represented 800 of the inhabitants of Bedford, who were dissatisfied with the proposals laid before the Master, for the management of the above charity, and prayed that they might be permitted to attend before the Master on the reference for the scheme. No order was made on the petition, but the petitioners had, in accordance with the recommendation of the Court, memorialized the Attorney-General, who had declined acceding to their request, on the ground that the proceedings would be unnecessarily embarrassed by their interference before the Master, but had promised that any suggestion they might make to him through the solicitor of the Treasury would receive attention.

Lloyd, for the petitioners, said, they were satisfied with this arrangement, but asked to be relieved from payment of the costs of the petition.

The *Solicitor-General* and *Stevens* for the trustees of the charity; *Calvert* for New College, Oxford, the visitors; *Wray* for the Attorney-General.

The Court dismissed the petition with costs.

July 11, 13.—*Hardy v. Dartnell and another*—Stand over, with liberty to proceed at law upon the ground of contempt.

—14.—*Green v. Briggs*—Master's decision affirmed, refusing costs of third counsel in taxation of costs as between party and party.

—14.—*Attorney-General v. Rivaz*—Reference to the Master as to charity scheme.

—14.—*Brogden v. South Eastern Railway Company*—Leave to serve notice of motion for injunction, restraining company from taking possession of works.

—16.—*Marquis of Londonderry v. Ovingdon*—Cur. ad. vult.

—16.—*Brogden v. South Eastern Railway Company*—Order by consent.

—14, 17.—*In re York and North of England Assurance Company*—Order for winding up.

Queen's Bench.

(Before the Four Judges.)

O'Hare v. Reeves. May 7, 1849.

SET-OFF OF JUDGMENT IN FIRST AGAINST THAT OF SECOND ACTION.

Held, that, although the discharge of a person under the 48 G. 3, c. 123, exempts him from all liability, a judgment in a former action may be set-off by him against the costs in a second action brought by the defendant of the first, and in which a verdict was recovered.

The plaintiff had brought an action *in forma pauperis* against the defendant, and had obtained a verdict with 21*l.* damages. The costs were taxed at 29*l.* 9*s.* 11*d.* The defendant, however, having in an action of ejectment previously obtained a verdict against the plaintiff, applied for leave to set-off his costs in the action so recovered against the costs in the

second. The application was made to Mr. Justice Coleridge, who ordered satisfaction to be entered on the record in the second action. Whereupon the plaintiff applied to rescind the order so made.

Godson, Q. C., in support of the motion.

The Court held, that the plaintiff was liable for the costs in the action of ejectment, and that though the 48 G. 3, c. 123, under which he was discharged, exempted him from liability, the judgment in the first action in other respects remained in full force. The rule, therefore, must be refused.

July 11.—*Regina v. Justices of Gloucestershire*—Rule absolute for mandamus to justices to hear application for bastardy order.

—11.—*Baum v. Ricketts and others*—Rule nisi for new trial discharged.

—11.—*Halkett v. Merchant Traders' Ship Association*—Rule nisi to issue execution on shareholder, discharged with costs.

—11.—*Jenkins v. Hutchinson*—Judgment for defendant.

Queen's Bench Practice Court.

(Coram Coleridge, J.)

Ex parte the Commissioners in Lunacy. May 3, 1849.

HABEAS CORPUS.—LUNATIC.

Held, that this Court will not interfere in a case where the Lunacy Commissioners have not shown that the party sought to be brought up by habeas corpus is improperly confined, as the mother was justified by the daughter's conduct in not allowing her to return home.

THIS was an application on behalf of the Commissioners in Lunacy for a writ of habeas corpus to bring up the body of a young lady. It appeared that the young lady was a lunatic, and had been placed under the care of a medical man, and upon her recovery was removed by her mother and placed with a person named Bostock, near Hanwell. The Commissioners having received information as to her treatment there, had her brought up before them, and, in answer to their questions, it appeared that she was desirous to return home, and was detained there against her will. Soon after the mother removed her, and the Commissioners made the present application in order to ascertain whether she was under proper care.

Peacock in support of the motion.

The Court, however, said that the Commissioners ought to show that the young lady was cruelly treated or improperly restrained, to induce the Court to interfere. The mother had stated her reasons for refusing to inform the Commissioners where her daughter was, and the mother had clearly a right to refuse to acknowledge the authority of the Commissioners, as her daughter was no longer a lunatic. The rule must therefore be refused.

Court of Common Pleas.

Wylde v. Harris. June 12, 1849.

BREACH OF PROMISE OF MARRIAGE.—
CONSIDERATION.

Where the defendant, who was at the time married, made a promise of marriage to the plaintiff, Held, that the circumstance of the defendant's being so married did not affect the plaintiff's remedy for a breach of the contract; and a rule to arrest judgment obtained in an action was discharged.

This action was brought for a breach of promise of marriage, and the plaintiff obtained a verdict. It appeared that the defendant had promised to marry the plaintiff, and the declaration stated that, in consideration of such promise, the plaintiff had agreed to remain single for a reasonable time and marry the defendant, and then alleged that she did remain single and unmarried until it was discovered that, at the time of the promise, the defendant was married.

A rule nisi had been obtained to arrest the judgment, on the ground that there was no consideration to the promise, as the defendant was married at the time thereof.

Huddestone in support of the rule; *Wilkins*, S. L., contra.

The Court said that the defendant could not set up his fraudulent concealment of his marriage in order to release him from his contract. The plaintiff had fulfilled her part of the promise, as she had continued single and unmarried for a reasonable time, and the rule must therefore be discharged.

Court of Exchequer.

Davy v. Budden. May 25, 1849.

EXCESSIVE DISTRESS.—STATUTE OF MARLBIDGE.—LODGER.

Held, that under the Statute of Marlbridge, a lodger can sue the landlord for an excessive distress as well as the tenant; and where goods were seized to the amount of 30l., and the rent was only 24l., the verdict of the jury giving 30l. damages was held right, and a rule for new trial refused.

This was an action brought by a lodger for an excessive distress, under the Statute of Marlbridge, 52 Hen. 3, c. 4. The tenant of the premises had not sufficient chattels to satisfy the distress, and the landlord therefore distrained some of the goods of the lodgers, among whom was the plaintiff. It appeared, that the rent was 24l. a year, and that two quarters were due; and that the defendant had seized and sold 60l. worth of the plaintiff's goods, which were deposited with the tenant of the premises for safety. The jury had given a verdict for the plaintiff, with 30l. damages, whereupon this motion was made for a rule nisi to set aside the verdict and enter the verdict for the defendant, or to arrest judgment.

Matthews, in support of the application, contended, that the Statute of Marlbridge only applied to cases where the relation of landlord and tenant subsisted, and not to a case where the party whose goods had been distrained was merely a lodger of the tenant.

The Court said, that there was nothing in the Statute of Marlbridge which could confine the remedy in a case of excessive distress to an actual tenant, and that as the defendant had seized and sold the plaintiff's goods worth 60l. when the rent was considerably less, the finding of the jury that it was an excessive distress was right, and the rule must, therefore, be refused.

Nisi Prius.

(*Coram Parke, B.*)

Jackson v. Carrington. May 25, 1849.

DECLARATION.—NOTICE OF DISHONOUR.—
IRREGULARITY.—AMENDMENT.

Where the declaration in an action on a dishonoured cheque drawn on a banker's where the defendant had no assets or account, did not aver notice of dishonour, it was allowed to be amended on payment of the costs of amendment as well as the costs of the day.

THE defendant, a horse-dealer in London, purchased a horse for 70l. from one Pell, and paid the amount by a cheque on a banker. Pell indorsed and paid the cheque to the plaintiff, who, after presenting it in due time, and finding that the defendant kept no account there, brought this action to recover the amount. The defendant pleaded *inter alia* that no notice of the dishonour had been given to him.

Humfrey and Mellor, for the plaintiff, contended that no notice was requisite, as by drawing the cheque on a banker's where he knew he had no assets nor account, he had abundant notice that the cheque was dishonoured, and that it was equivalent to a personal act of dishonour, citing *Caunt v. Thompson*, 37 L. O. 455; and that it was therefore a question for the jury, whether the defendant had due notice of the dishonour.

Whitehurst and T. Jones for the defendant.

The Court held, that the declaration should have alleged the notice of dishonour; but the Court would allow the record to be amended upon the plaintiff paying the costs of the amendment as well as the costs of the day—the case to stand over for that purpose.

Insolvent Debtors' Court.

(*Coram Mr. Commissioner Law.*)

In re William Jones. June 11, 1849.

INSOLVENT.—BREACH OF TRUST.—IMPRISONMENT.

Where the insolvent received a sum of money to invest in railway shares, and after the purchase deposited them with his bankers as security for a debt: Held, to amount to

a breach of trust, and he was ordered to be imprisoned for 18 calendar months at the suit of the parties.

In this case the discharge of the insolvent, a tea-merchant and share-dealer, at Liverpool, was opposed by the Misses Whyting, on the ground that they had entrusted him, for the purpose of investing in the Midland Counties Railway, with a sum of 5,000*l.*, which by his advice they had sold out from the Bank of Ireland, and that he had informed them the investment was made, and paid the interest of five per cent. thereon. Upon the Misses Whyting applying for the securities, it was, after some delay on the insolvent's part, discovered that the securities had been deposited, the day after the purchase, with the insolvent's bankers to secure the payment of a debt due from him to them.

Cooke, in opposition to the discharge, urged, that this amounted to a breach of trust.

Sargood, for the insolvent, contended, that the Misses Whyting had lent the money to him, and that the interest thereon had been duly paid by him.

His Honour held, that the depositing the shares as a security to the bankers, amounted to the same thing as if the insolvent had appropriated the money without purchasing any shares, and that therefore the receiving of the money for a specific purpose, and having applied it for his own benefit, amounted to a breach of trust. The insolvent would remain in custody for 18 calendar months from the date of the vesting order, at the suit of the Misses Whyting; after the expiration of four calendar months' imprisonment at the suit of his other creditors.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Equity.^a

LAW OF COSTS.

[For the previous Sections of this Series of the Digest in the present Volume, see,—

Privy Council :

Appeals, 88.

House of Lords :

Appeals, 171.

Law of Bankruptcy, 211.]

ALTERING ORDER.

Appearance of unnecessary parties.—It is a gross irregularity to procure the registrar to alter, without the consent of all parties interested, the form of an order, after the minutes have been settled; and the solicitor obtaining such alteration will be ordered, as a matter of course, to pay all the costs consequent upon the application to strike it out.

Parties unnecessarily served with notice of motion will not be allowed the costs of their appearance. *Major v. Major*, 37 L. O. 132.

APPEAL.

Where an order was varied on appeal, upon grounds which were not mentioned to the Court below, the party moving was ordered to pay the costs of the application. *Steele v. Plomer*, 1 H. & T. 149.

ATTORNEY GENERAL.

In a suit instituted for the benefit of the public by the Attorney-General, the defendants excepted to the Master's report that their an-

^a Mr. Phillips' Reports have been discontinued at the close of the second volume, and the Lord Chancellor's decisions are now reported by Messrs. *M'Naghten and Gordon*, and Messrs. *Hall and Twells*; the former published by Messrs. Benning, the latter by Messrs. Maxwell and Son.

swer was insufficient, but the exceptions were overruled: *Held*, that the costs occasioned by such proceedings ought to be paid to the Attorney-General—no objection having been made at the hearing. *Attorney-General v. Corporation of London*, 38 L. O. 82.

AWARD.

See Compensation.

BANKRUPT DEFENDANT.

See Dismissal.

CHARITY.

1. *Lands Clauses Consolidation Act.*—Where a bill had been filed against a charity, but dismissed, and certain costs, as between solicitor and client, necessarily incurred in the defence of the suit, had not been provided for: *Held*, that a sum of money in Court arising from a subsequent purchase of a portion of the land by a railway company was liable to pay such costs under the 69th section of the Lands Clauses Consolidation Act. *Ex parte Free School of Louth, In re the East Lincolnshire Railway Act*, 37 L. O. 109.

2. *Transfer to new trustees.*—Order for transfer of charity fund to new trustees,—one set of costs only to be allowed to the old trustees, who appeared separately, and those to the trustee who had not opposed the transfer. *In re Emberton Friendly Society*, 38 L. O. 67.

COMPENSATION.

Award.—An award was made by an arbitrator, under a reference to assess compensation for lands taken, for a greater sum than that offered by the railway company, but no direction was given as to costs. The parties, therefore, agreed to refer it to the Taxing Master of the Court of Queen's Bench. A petition for the taxation of further costs incurred in consequence of the taking of the land by the company was refused, on the ground that the

parties had by their conduct adopted the award, which it must be assumed included those expenses. *In re Lancaster and Carlisle Railway Acts*, 38 L. O. 167.

CONSOLIDATION OF SUITS.

Four suits were consolidated, and the conduct given to the plaintiff in one of them, who was a devisee and legatee: *Held*, that he was entitled to his extra costs, which he had properly incurred in the prosecution of the decree. *Lockhart v Hardy*, 10 Beav. 292.

CONTEMPT.

Sequestration.—An order for payment of the costs of a contempt, will include the costs of a sequestration, although the sequestrators have not yet made a return; and the direction for the taxation of the costs should be absolute, and not dependent upon the fact, whether the parties differ about the same. *Steele v. Plomer*, 1 H. & T. 149.

COUNSEL.

The costs of employing two Queen's Counsel for the plaintiff, at the hearing, allowed: the 2nd Queen's Counsel having drawn the bill when he was without the bar. *Carter v. Barnard*, 16 Sim. 157.

See *Taxation*.

DEVISEES.

General Order xix. of Aug. 1841.—*Defendant against whom no relief is sought*.—In a suit by some of the members of a class, claiming under a conditional limitation by devise in favour of such class, against parties who claimed under a recovery suffered of the estate by the first taker under the same devise, the other members of the class in the same interest as the plaintiffs, who decline to become co-plaintiffs, may be served with the copy of the bill, under the 29th Order of Aug. 1841; and, if they are required to appear and answer, their costs must be paid by the plaintiffs. *Abram v. Ward*, 6 Hare, 170.

DISCLAIMER.

See *Foreclosure*.

DISCRETION.

According to the modern practice, the Court, though it retains a discretion, generally acts on the rule, that, *prima facie*, the unsuccessful party is to be charged with the costs of the suit, and in the present case, it gave costs against an unsuccessful plaintiff, though the case was one of great difficulty, arising out of a will dependent on foreign law.

Where, under the circumstances of the case, an unsuccessful plaintiff is to be charged with the costs of suit, the result is not altered by the additional fact, that the institution of the suit was recommended by the Master. *Earl Nelson v. Lord Bridport*, 10 Beav. 305.

DISMISSAL.

1. *Bankrupt*.—*Want of prosecution*.—A few days after the bill was filed, the defendant became bankrupt. The plaintiff soon afterwards obtained the common injunction, for

want of answer, to restrain an action at law, and no further steps were taken, either in the action or the suit, for two years. The defendant had not yet got his certificate, but had been declared entitled to it. He then put in his answer, and was in a situation to move to dismiss for want of prosecution: *Held*, that notwithstanding his bankruptcy, and the other circumstances of the case, he was entitled to an order, that the bill should be dismissed, with costs. *Blackmore v. Smith*, 1 H. & T. 155.

2. Bill dismissed for want of prosecution, with costs, on the motion of a defendant, who was an uncertificated bankrupt. *Blackmore v. Smith*, 1 M'N. & G. 80.

Case cited in the judgment: *Monteith v. Taylor*, 9 Ves. 615.

3. *Pauper*.—Where a bill of dismissal by plaintiff is against a pauper defendant, such defendant is entitled to *dives* costs and not *pauper* costs. *Rubery v. Morris*, 37 L. O. 71.

EXCEPTIONS TO ANSWER.

Discovery.—The costs of exceptions to the answer of a defendant to a bill of discovery, which the Master, under the 19th Order of December, 1833, has certified ought to be borne by the defendant, are not within the 28th Order of April, 1828, or the 124th Order of May, 1845; but the Court will, upon application, (*ex parte*), order such costs to be taxed and deducted from the costs of the suit payable to the defendant. *Hughes v. Clerk*, 6 Hare, 195.

FORECLOSURE.

Second incumbrancer disclaiming.—Where, on a bill of foreclosure by a first mortgagee against a second mortgagee and the mortgagor, the second mortgagee, by his answer, disclaimed, yet the plaintiff brought the second mortgagee to the hearing, no costs were given to the second mortgagee on the decree against him, upon the preponderance of modern decisions, though formerly the practice was to give such disclaiming second mortgagees defendant his costs, the plaintiff adding such costs to his own. *Ohrly v. Jenkins*, 1 De G. & S. 543.

ISSUE ON INTERLOCUTORY APPLICATION.

The costs of an issue directed on an interlocutory application may be disposed of after the issue is decided without waiting for the hearing of the cause. *Malins v. Price*, 2 Coll. 190, overruled. *Duncan v. Varty*, 2 Phill. 696.

LANDS CLAUSES ACT.

A. purchased green-acre for 1,000*l.*, in lieu of black-acre which a railway company had taken from him, and for which they had paid 644*l.* into Court. The company were ordered to pay A. the same costs as he would have been entitled to under the 80th section of the Lands Clauses Act, if green-acre had cost 644*l.* only. *In re Sheffield and Lincolnshire Railway Act, ex parte Hodge*, 16 Sim. 159.

See *Charity*, 1.

LEGACY.

Set-off.—*M. W.*, by his will, gave his son 100*l.*, and afterwards lent him 100*l.* on his promissory note. When the testator died the son demanded payment of the legacy, and then the executor sued him on the note. A bill was filed to restrain the action and for payment of the legacy, which made an ineffectual case of set-off, and a verdict was then given for the plaintiff. The bill was dismissed with costs, except so far as they were increased by the claim of set-off. *Woods v. Woods*, 37 L. O. 396.

LUNATIC.

1. *Assignee of interest of sole next of kin.*—*Stop order.*—Order, in the nature of a stop order, granted on the application of the assignee of the interest of the sole next of kin of a lunatic. *In re Moore*, 1 M'N. & G. 103.

Case cited in the judgment: *Ex parte Alchin*, temp. Eldon, Reg. Lib. 1824, A. 2048.

2. *Mortgagee.*—*Trustee.*—*Reconveyance.*—Where a mortgage in fee had been executed with knowledge that the mortgagee was a trustee only of the money advanced, and the mortgagee became lunatic, all such extra costs of procuring a reconveyance as were occasioned by the lunacy were thrown upon the mortgagor, and were not payable either by the lunatic or by the parties beneficially interested in the mortgage-money. *In re Lewes*, 1 H. & T. 123; S. C. 1 M'N. & G. 23.

MORTGAGE.

Sale.—A decree for sale of an encumbered estate does not of itself alter the rights of parties.

A mortgagee of estates on which the incumbrances were numerous and of a complicated nature, filed a bill for foreclosure and redemption, and, by consent, the estate was sold: *Held*, that the costs of sale ought not to be paid, in the first place, out of the general fund, but that the money arising from the sale of each separately encumbered estate, ought to be treated in the same manner as the estate itself would have been, and that the mortgagees ought to be paid their principal, interest, and costs, according to their respective priorities. *Wild v. Lockhart*, *Lee v. Lockhart*, 10 Beav. 320.

MOTION.

New Orders.—The costs of an interlocutory proceeding, are not costs of the suit. *Finden v. Stephens*, 16 Sim. 40.

NEW TRIAL.

Will.—In 1846, an issue was directed to try whether a will dated in 1825 had been signed and published in the presence of three credible witnesses, *A.*, *B.*, and *C.*, and whether it was attested by them. *A.* was dead, and his signature was proved; *B.* denied having signed the will, but was disbelieved by the judge and jury; and *C.*, an ignorant man, proved his attestation, but did not remember the signing or

publication by the testatrix. The jury found for the will.

The Court, under the circumstances, refused, with costs, an application for a new trial. *Hitch v. Wells*, 10 Beav. 84.

PAUPER.

See Dismissal.

PETITION.

A party served with a petition does not forfeit his right to the costs of his appearance merely because his counsel at the hearing has raised an unsuccessful opposition to the prayer. *Ex parte Stevens*, *In re London and South-Western Railway Extension Act*, 2 Phill. 772.

SALE.

See Mortgage.

SECURITY FOR COSTS.

Plaintiff abroad.—Where the plaintiff in a suit had gone abroad out of the jurisdiction after answer filed, he was ordered to give security for costs, although he did not intend to reside permanently abroad and came frequently to England. *Kennaway v. Tripp*, 38 L. O. 66.

SET-OFF.

See Legacy.

SETTING ASIDE SUBPENA.

Former application.—Application to set aside subpoena to enforce payment of costs, refused, on the ground that the costs occasioned by former applications for a similar purpose had not been paid. *Oldfield v. Cobbett*, 38 L. O. 107.

SETTING OUT PUBLIC ACT.

Petition.—*Held*, that the costs occasioned by setting out the words of a public act at length would be refused under the 122nd Order of May, 1845. *In re Manchester and Leeds Railway Company*, *ex parte Osbaldistone*, 38 L. O. 148.

SEQUESTRATION.

See Contempt.

TAXATION.

Third counsel.—Upon taxation of costs between party and party, *held*, that the general rule was to allow only two counsel. *Attorney-General v. Monro*, 38 L. O. 50.

See Counsel.

TRUSTEES.

Two trustees severed in their defence: one was charged with misconduct, but not the other. The Court allowed only one set of costs, and gave the whole of them to the innocent trustee. *Webb v. Webb*, 16 Sim. 55.

See Charity, 2.

UNNECESSARY PARTY.

Where an unnecessary party had been served with a petition, solely in consequence of a claim set up by him, he was left to bear his own costs. *In re Shrewsbury School*, 1 M'N. & G. 85.

See Altering order.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, JULY 28, 1849.  
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ABANDONED BILLS RELATING TO THE LAW.

THE winding up of the Session and the near approach of the prorogation of parliament, is marked with tolerable distinctness by the number of bills abandoned at this period, and by the increased coolness and indifference with which members of the government, as well as others, not only witness, but assent to the strangulation of their legislative offspring and foster-children.

Since our last publication, three measures in which the profession may be supposed to feel a peculiar concern, and which formed the subject of commentary in these pages, have been withdrawn by the ministers under whose superintendence they were proceeding through parliament, upon various grounds.

The alterations made by the Select Committee in the Bill to Amend the *Administration of Justice in the Metropolitan Districts*, (noticed *ante*, p. 217,) were so extensive, and involved changes requiring so much consideration, that Sir George Grey very judiciously, declined to take upon himself the responsibility of pressing forward such a measure at a period when so little time could be afforded for examination and inquiry from practical persons as to its probable operation.

The Bill for better *Auditing the Accounts of Railway Companies*, which, although originally introduced by Lord Montague, was subsequently adopted by the government, and contained some most objectionable provisions in respect of the taxation of railway solicitors' bills, which were the subject of repeated strictures in recent numbers,*

has also been withdrawn, a deputation from the principal railway companies, having intimated to the President of the Board of Trade their determination to oppose the further progress of the bill. Mr. Labouchere announced that if some arrangements were not made by the railway companies to preclude the necessity of such a measure, he should think it his duty to bring it forward next Session on behalf of the government; but as the clauses to which we have adverted are in no respect necessary for effecting the legitimate objects of a perfect and satisfactory railway audit, and are, moreover, wholly indefensible upon principle, we confidently hope to find them omitted in any new bill that may hereafter be introduced.

The Bill introduced by the Attorney-General, in the middle of June last, "to extend the Provisions of the Acts for the more Speedy Trial and Punishment of *Juvenile Offenders*, and to apply the same to the *Trial and Punishment of Small Larcenies*," never got beyond a second reading, and has been, as we had reason to believe it would be, abandoned. The objects contemplated by this measure were twofold:—1st, To extend the provisions of the 10 & 11 Vict. c. 82, and 11 & 12 Vict. c. 59, which affect persons not exceeding fourteen years of age, to offenders whose age does not exceed sixteen years; and 2ndly, To extend the provisions of the act, without any regard to age, to all cases of simple larceny, where the value of the property stolen, or attempted to be stolen, does not exceed five shillings.

We concur with Sir George Grey in thinking that a measure of so much importance and upon which so great a difference of opinion existed, ought not to be passed without ample time for discussion and consideration, but it is not satisfactory to find a bill of such importance produced

* See *ante*, pp. 192 and 201.

under the sanction of the first Law Officer of the Crown, flung aside without any debate on the principle. It is not expedient, perhaps, that independent members of the legislature should throw their own crotchets into the shape of a bill, and lay it upon the table of one or other of the Houses of Parliament, with the view to elicit public opinion; but a bill, with the Attorney-General's name on the back, involving an extensive change in administrative justice, ought to have been well considered before it was produced, and not hastily withdrawn, merely because it appeared that the experiment was not one likely to meet universal approval.

That the bill has not been passed in the form in which it was introduced, is matter of congratulation; but it is by no means clear that a modified measure of this description would not be very generally accepted as a great improvement in our system of criminal adjudication. The question really is, has the summary jurisdiction conferred on magistrates, under the Juvenile Offenders' Act, (10 & 11 Vict. c. 82,) proved a decidedly successful experiment? It cannot be gainsaid that it is a constitutional innovation to give two justices—or one stipendiary magistrate—the power to hear and determine charges of simple larceny, without the intervention of a jury, whether the offender be sixteen or only fourteen years of age. But when the evils of long imprisonment previously to trial, and the inevitable expenses attending prosecutions at the Assizes or Sessions are considered, the practical question is, whether the interests of the whole community are not promoted and best secured by a partial abnegation of the system of jury trial?

The two acts recited in the first section of the Attorney-General's Bill relate respectively to England and Ireland. The Irish Act, (11 & 12 Vict. c. 59,) which obtained the Royal Assent so recently as the 14th August last, contains a provision not to be found in the 10 & 11 Vict., and which, if introduced into the bill framed by the Attorney-General, (and meant, we presume, to extend to Ireland as well as England,) would go far to obviate the objections founded upon constitutional grounds. The provision to which we allude, and which forms part of the first clause of the 11 & 12 Vict. c. 59, is as follows:—

“Provided also, that if such justices shall be of opinion, before the person charged shall have made his or her defence, that the charge is from any circumstance a fit subject for pro-

secution by indictment, or if the parent or next friend of the person charged shall, upon his or her being called upon to answer the charge, object to the case being summarily disposed of under the provisions of this act, such justices shall, instead of summarily adjudicating thereupon, deal with the case in all respects as if this act had not been passed.”

If such a provision be necessary for the protection of persons under fourteen years of age in Ireland, we see no good reason why it should not be extended to juvenile offenders in England, nor why the principle of the proviso may not be advantageously imported into any measure hereafter introduced giving a summary jurisdiction in cases where, irrespective of the age of the alleged offender, the subject of the theft or attempted theft is of so little value as five shillings. In such cases, the exercise of a summary jurisdiction, and the avoidance of lengthened imprisonment before trial would frequently be a merciful and salutary proceeding, as regards the offender, whilst the public would be saved an outlay of money and a waste of time seriously felt in towns as well as in rural districts. The operation of local prejudices and influences, which are principally apprehended by those who deem it unsafe or unwise to entrust magistrates with summary authority, would be sufficiently guarded against by giving the accused the option of having his case determined by the ordinary tribunal, whenever he conceives that justice will not be done to him, by the magistrate before whom the charge is made in the first instance.

On the other hand, a charge of larceny, although the property alleged to be stolen may not exceed 5s. in value, occasionally assumes features rendering it desirable that it should be adjudicated upon with more solemnity and publicity than ordinary charges at Petty Sessions, and in such cases magistrates should have a discretionary power of declining to act summarily, and directing the charge to be dealt with in the ordinary manner by indictment. If a measure with a similar object should be brought forward again next Session, we hope it may be with some such modifications.

We have thought it necessary to discuss the Attorney-General's Bill at greater length than we should otherwise have done at this time, because, as usual in matters of this description, the resistance to the bill is alleged to have come from interested parties connected with the legal profession.

It is said, with what little foundation our readers can judge, that those who practise in criminal cases at Sessions anticipated

that their interests would be injuriously affected by the proposed extension of a summary jurisdiction. The number of professional men deriving profit from this species of practice, however, is comparatively insignificant, and, as respects the larger branch of the profession, its members would be as often retained if charges were heard before two magistrates, as when similar charges are tried at the Quarter Sessions. The motive suggested, therefore, is in a great degree imaginative, but were it otherwise, we are satisfied that no member of the profession—barrister or attorney—deserving of the confidence of others, desires that in such a matter his personal interests should stand in the way of the real and rightly-understood interests of the public.

To the catalogue of abandoned bills we must add the following :—

Life Policies Assignment.

Estates Leasing, (Ireland).

Bankrupt and Insolvent Members.

Marriages within certain prohibited degrees.

There are many other measures which, though not yet formally postponed, must necessarily stand over till another Session.

PASSENGERS' REGULATION ACT.

ALTHOUGH the Act to amend and consolidate the existing Laws relating to the Carriage of Passengers by Sea, is rather matter of public regulation and not directly connected with the administration of justice, the activity which at present prevails upon the subject of emigration, and the number of legal questions to which the new act will probably give rise, induce us to subjoin a complete summary of its enactments. It will be observed that jurisdiction is given to justices of the peace in England, and sheriffs in Scotland, in various instances in which these functionaries were not previously empowered to act. Whether the regulations established by the act may not be found to operate inconveniently upon those connected with the commercial marine, time will disclose.

12 & 13 VICT. c. 33.

An Act for regulating the Carriage of Passengers in Merchant Vessels. [13th July, 1849.]

This act contains the following clauses :—

1. From and after 1st October, 1849, the following acts repealed; viz., 5 & 6 Vict. c. 107;

8 & 9 Vict. c. 14; 10 & 11 Vict. c. 103; and 11 & 12 Vict. c. 6.

2. Short title of act: "Passengers' Act, 1849."

3. Definition of terms used in the act.

4. Act to extend to every "passenger ship" proceeding from the united kingdom to any place out of Europe, and on every colonial voyage, as hereinafter described; but not to extend to Queen's ships, nor to ships or transports in the service of the East India Company, nor to steam vessels carrying mails.

5. Commissioners of Emigration to carry this act into execution.

6. Emigration officers and assistants to act under commissioners, for the purpose of carrying this act into execution.

7. Duties of emigration officer, to be performed in his absence by assistant, and if no emigration officer or assistant, by the chief officer of customs at the port.

8. Facilities to be given to the proper officers for the inspection of all ships fitting for passengers, and for ascertaining that the provisions of the act are complied with.

9. No "passenger ship" to be cleared out, without a certificate from the emigration officer that the requirements of the act have been duly complied with.

10. Number of passengers to be limited by tonnage (i. e. one person to every two tons,) and by space (i. e. one passenger for every 12 superficial feet, or for every 15 such feet, if the voyage is within the tropics and computed to exceed 12 weeks.) Master liable to a penalty, not exceeding 5*l.* and not less than 2*l.*, for each passenger in excess.

11. Children under one year not to be included in computation, and two children under 14, to be computed as one passenger.

12. Two lists of passengers to be made out by master before clearance, in a form prescribed by Schedule A., one of which is to be retained by the officer of customs at the clearing port, and the other signed by him, and returned to the master, who is to exhibit it, with any additions which may be made, to the officer of customs, or British consul, at any port at which any of the passengers shall be landed, and to deposit it with such officer or consul at the final port of discharge.

13. Lists of additional passengers taken on board after clearance, to be signed by the master, and exhibited or deposited as already provided.

14. No "passenger ship," to be allowed to clear out, until she has been surveyed by a surveyor authorized by the emigration commissioners, and reported sea worthy and fit for her intended voyage.

15. The decks in "passenger ships" to be at least one inch and a-half in thickness, the height between decks at least six feet, no more than two tiers of berths on any one deck, and such berths to be six feet in length and 18 inches in width for each passenger. Persons of different sexes above 14, unless husband and wife, not to be placed in the same berth, and

no berths occupied by passengers during the voyage, to be taken down for 48 hours after arrival at the port of final discharge.

16. Provisions for securing adequate light and ventilation. Penalty on owner for non-compliance with directions of emigration officers in respect thereof.

17. "Passenger ships" to carry boats, according to scale, to be approved of by emigration officer, and also two properly fitted life buoys.

18. No "passenger ship" to be cleared out until manned with a proper complement of seamen for intended voyage.

19. Computation of number of weeks necessary for certain voyages: Power of emigration commissioners to declare, in *London Gazette*, what shall be deemed length of voyage.

20. Certain articles prohibited as cargo in "passenger ships," and in such ships no part of the cargo shall be on deck.

21. Provisions and water to be provided by owners or charterers in sufficient quantities to afford a prescribed allowance to each passenger; quality to be approved of by emigration officer. Penalty on fraudulently obtaining clearance for passenger ship not sufficiently stored, not exceeding 100*l.* nor less than 50*l.*

22. Water to be taken in casks or tanks, not containing more than 300 gallons each, and approved by emigration officer.

23. Provisions and water to be surveyed before clearing out: Proviso for touching at intermediate ports to fill up water.

24. Dietary scale for the voyage, irrespective of any provisions of their own which any passengers may have on board.

25. Emigration commissioners, by notice in the *London Gazette*, may substitute any other articles of food for those before mentioned.

26. Passengers' cook and cooking apparatus to be provided, and approved of by emigration officer.

27. No "passenger ship" carrying a certain number of passengers, to proceed on her voyage without a medical practitioner on board; but ships bound to North America having 14 clear superficial feet for each passenger, may proceed without a medical practitioner.

28. Medicine chest, &c. to be provided at the expense of the owner or charterer, under the superintendence of emigration officer.

29. No "passenger ship" to clear out until after inspection of passengers and medicine chest by some medical practitioner appointed by the emigration officer; who shall certify that the ship contains a sufficient supply of medicines, and that none of the passengers appears to have any infectious disease likely to affect the health of the other passengers.

30. Diseased person may be relanded, with such members of his family as may be dependent on him, or unwilling to be separated from him.

31. Passengers so relanded may recover passage money.

32. Where passages not provided according to contract, passenger may obtain return of

passage money and compensation, not exceeding 10*l.*, by application to a justice of the peace.

33. If the ship shall not proceed on the day appointed for sailing, the owner, charterer, or master, shall pay to every passenger ready to proceed, 1*s.* for each day of delay, for subsistence money; but if the ship be unavoidably detained, by wind or weather, and the passengers be maintained on board, no subsistence money shall be payable.

34. In case of wreck, or detention from damage, passengers to be provided with passage in some other equally eligible vessel, and in default, may recover by summary process, all monies paid on account of voyage, and such further sum not exceeding 5*l.*, as justices shall deem reasonable for compensation for loss of passage.

35. No passenger to be landed, without his consent, at any port other than that at which he contracted to land.

36. Passenger to be entitled to sleep in ship for 48 hours after arrival, and to be provided and maintained as during the voyage.

37. Passengers' right of action preserved against any person with whom he contracted, in case of non-performance.

38. Passenger ships, detained for more than seven days, or putting back, to replenish stock of provisions, water, medicines, &c., under a penalty.

39. Her Majesty may issue orders in council, prescribing rules for preserving order, cleanliness, &c., on board "passenger ships" proceeding to the colonies. *Gazette* and copies printed by the Queen's printer to be evidence.

40. Surgeon, or master, to exact obedience to all such rules and regulations. Penalty for obstruction in enforcing rules, or disobedience thereto.

41. Emigration commissioners to prepare an abstract of act and orders in council, to be posted up in each ship. Penalty on master for neglect, and on person defacing abstract.

42. Sale of spirits prohibited in "passenger ship" during the voyage.

43. Bond by the owner or charterer, or some sufficient person in his behalf, in the sum of 1,000*l.* for the due performance of the requirements of the act, and of any order in council, and also for payment of penalties. Bond to be without stamps, and not put in suit after 12 months succeeding the termination of the voyage, or the return of the ship or master to the united kingdom.

44. No person to act as a passage broker, in respect of passengers to North America, without entering into a bond in 200*l.* with two sureties, and obtaining a license.

45. Justices to grant license, and to give notice to emigration commissioners of license granted; but no such license to be granted without bond, and notice of intended application for license. Two justices may order license to be forfeited, and give notice of forfeiture to emigration commissioners.

46. Licenses granted under the 5 & 6 Vict.

c. 107, to continue in force until 1st February, 1850.

47. Contract tickets, in a prescribed form, to be given to any person paying any money in respect of passage to North America. Penalty on default.

48. Penalty for altering, or inducing any person to part with contract ticket.

49. Penalties on agents acting without written authority from principals. No person entitled to commission or fee for services to emigrants, unless acting as agent of licensed broker, under written authority.

50. Penalties on masters of ships with respect to the inspection of ships, emigration officers' certificate, passengers' lists, additional passengers' lists, survey, ventilation, boats, manning, provisions and water, surgeon and medicines, landing diseased passengers, wrongfully landing, maintenance of passengers on arrival, and keeping copies of act on board.

51. Penalty on falsifying, or forging, forms of application for passages, or the certificates in support thereof.

52. Process for the recovery of penalties, and also for the recovery of passage, subsistence, and compensation, monies.

53. Application of penalties, with power to justices to direct compensation out of penalties to party aggrieved.

54. Burden of proof, that ship exempt from the provisions of the act, to lie on party claiming the benefit of such exemption.

55. *Viduo* evidence sufficient proof of a party being an emigration officer.

56. Passengers suing not incompetent by reason of interest.

57. Tender of amends before action brought, allowed.

58. Limitation of actions. Defendant may plead general issue, and if successful, entitled to costs, as between client and solicitor.

59. Sheriffs in Scotland, to act in the same manner as justices of the peace in England.

60. Colonial voyage defined to signify, a voyage from any of her Majesty's possessions abroad (except the territories under the government of the East India Company) to any other port whatever, the duration of which shall exceed three days.

61. Certain parts of the act, that is to say, giving a bond to her Majesty, keeping on board copies of the act, &c. Return of passage money and compensation, and payment of sustenance money in case of detention, not to extend to colonial voyages. Further exemption from provisions of the act in respect of colonial voyages shorter than three weeks.

62. Governor of colonies may, by proclamation, declare length of voyage, and substitute other articles of food and medicine. Proclamations to be transmitted for her Majesty's confirmation or disallowance. Attested copy of such proclamation to be sufficient evidence.

63. Provision for appointment of surgeons and surveyors by governors of colonies.

64. Power to the Governor-General of India

in council, to adopt this act, with certain exceptions, in India.

SCHEDULES.

Schedule A. Form of passengers' list referred to in 12th section.

Schedule B. Form of bond to be given by owner or charterer and master, referred to in 43rd section.

Schedule C. Form of passage broker's bond, with two sureties, to be approved by Emigration officer at the nearest port, referred to in 44th section.

Schedule D. Form of passage broker's license, referred to in 45th Section.

Schedule E. Notice to be given to emigration commissioners by justice granting license. (Sect. 45.)

Schedule F. Notice by applicant for passage broker's license. (Sect. 45.)

Schedule G. Notice to emigration commissioners of forfeiture of license. (Sect. 45.)

Schedule H. Passengers' contract ticket, referred to in section 47.

NOTICES OF NEW BOOKS.

A Summary of the Law of Attorneys and Solicitors, describing their Legitimate Province, the regulations as to their Admission, Disqualification, and Re-admission, &c., their Duties and Functions in the General Practice of the Law, their Rights, Privileges, and Liabilities, and the Mode and Forms of Proceeding by and against them. With an Appendix of Statutes. By Alexander Pulling, Esq., of the Inner Temple, Barrister-at-Law. London : Butterworth. Pp. 397.

THIS work, after an introductory dissertation, treats—1. Of the qualification of attorneys and solicitors. 2. The annual certificate, registration, &c. 3. The suspension, disqualification, and re-admission of attorneys and solicitors. 4. Of the office, functions, and duties of attorneys and solicitors. 5. Of the rights, privileges, and exemptions of attorneys and solicitors. 6. Of the liabilities and disabilities of attorneys and solicitors. 7. Of the relative rights and interests incident to the business of an attorney and solicitor. 8. Of proceedings by and against attorneys and solicitors.

There being several other works extant on this subject, Mr. Pulling properly states the grounds on which he claims the attention of the profession, and describes the objects he had in view in the present publication. His preface, which we deem it fair to quote fully, is as follows :—

"In this *Summary of the Law of Attorneys and Solicitors*, I have attempted to embrace

the whole of the existing legal regulations affecting the class of Practitioners it professes to treat of. The well-known treatises on the *Law of Attorneys*, by Messrs. Maugham, Merrifield, and Dawson, with the articles on that subject in Bacon's Abridgment, Comyn's Digest, Viner's Abridgment, &c., are all materially impaired as authorities or works of reference by the late Consolidation Act of 6 & 7 Vict. c. 73, and the numerous decisions upon it; and the information contained in the Books of Practice since published is of too cursory a nature to render any apology necessary for a new work. The greatest portion of the materials for the present treatise were originally designed for a comprehensive work on the general regulations relating to those who are professionally or officially engaged in the administration of the English law; but the same reasons that, on two former occasions, induced me to substitute for general works publications of a less comprehensive nature, have operated in favour of a small and concise work on the *Law of Attorneys* in lieu of such an extensive treatise as that here alluded to; and I am induced to think, considering the large class of Practitioners who are interested in this subject, that there will be as little reason for myself or my publishers now to regret the substitution, as in the two previous instances where MS. notes, originally collected with the ambitious design of forming distinct general works on local and commercial law, were ultimately adapted to the very minute subjects of the *Local Laws and Customs of the City of London*, and the *Law of Mercantile Accounts*. The following pages will probably be of greater use to the Practitioner than a work mixed up with the other materials I had collected, and the abandonment of the more voluminous undertaking has certainly enabled me to publish much sooner than my professional avocations would otherwise have allowed me. Whether I shall ever be enabled to complete the larger undertaking may probably be of as little interest to the reader as it is of ambition to me.

"As the Title-page and the Table of Contents fully disclose the class of information which may be looked for in these pages it is unnecessary to say anything on that head. Their aim is to afford to Attorneys and Solicitors concise practical instructions as to the regulations, rights, duties, and liabilities, which are peculiar to their profession, and to serve as a digested index and work of reference for members of my own branch of the profession on the multifarious points which arise in court on the law of Attorneys.

"In some lectures published whilst the present work was being prepared for the press, an accomplished member of the bar, and deservedly popular writer, has described in eloquent language the moral and social duties of Attorneys and Solicitors.* The more humble aim of the

present work is to point out the regulations positively described, and the formal duties positively imposed on Attorneys and Solicitors in the general practice of the law; and with this view, though I have in the Introduction, and occasionally in other portions of the work, attempted to point out the legitimate province of this class of practitioners, yet it has been made a pointed object throughout to describe only the qualifications *which the law requires*, and the rights and liabilities which the law recognizes in this class. Whilst the Student and the Practitioner, therefore, may refer to the authorities which I have cited, as to their legal position, they must study the higher duties which society expect of them in works of a far higher caste. The Attorney may here, perhaps, find a safe guide in the practice of his profession *according to law*; but, with respect to what is strictly just, proper, and honourable, he must seek another Mentor.

"Much good is, however, often effected even by a clear exposition of what the law requires. It must be remembered that if Attorneys and Solicitors were never to give way to loose and careless practice, the term *sharp practice* would be almost unknown; and if the regulations which the Legislature and the Courts have laid down with so much care were more uniformly studied, and steadily followed by those whose *chief duty it is to act according to law*, far fewer charges of professional misconduct would be heard of. It has been often said that members of the legal profession, perpetually engaged in administering the law to others, are singularly careless of the laws relating to themselves. The disputes which continually arise from this inattention may serve as some recommendation for a treatise, whose object is, if possible, to diminish the number of instances where the time of our Courts is withdrawn from the ordinary duty of administering justice between private individuals, in order to entertain unseemly investigations into charges of irregularities, or misconduct against officers and Practitioners.

"In adapting the work for practical use, as a separate publication, I have necessarily introduced much more practical information, and included a larger number of Cases from the Practice Reports than I originally designed. The Table of Cases cited will give some idea of the care and labour expended on this part of the work. Whilst, however, I have thus endeavoured to adapt the work to the every-day purposes of the Practitioner, I have objected to clear away from it many notes and references to the older authorities, which, if not necessary to cite on every occasion, yet, as illustrative of important legal principles, appear to me well worthy to be preserved.

"I must, in conclusion, only say that, whilst I have collected all the decisions and authorities on the Law of Attorneys to the present time, and have endeavoured to afford accurate as well as practical information on every point relating to my subject which is discussed in other legal works, I have based my work on the Statute

* "The Moral, Social, and Professional Duties of Attorneys and Solicitors, by Samuel Warren, Esq., of the Inner Temple, Barrister-at-Law"

Law, the Rules of Court, and the Reported Cases only, not caring to rely on any previous text book, however useful in itself, when the authorities themselves could be consulted."

Several discussions having recently taken place, both in this and other legal periodicals, relating to the respective provinces of the Bar and the Attorneys, we are induced to extract some passages from Mr. Pulling's Introduction on those topics. The vocation of attorneys differs from that of barristers, according to Mr. Pulling, in the following respects :—

"The province of an attorney has been always considered in this country as it was in the civil law, to be very distinct from that of a *barrister* both with respect to the character of advocate and that of *counsellor*; for though, practically, attorneys and solicitors do occasionally act as advocates in some of our inferior courts, and before police magistrates, &c., and are commonly resorted to, in the first instance, for legal advice, and are expected to have a competent degree of skill and knowledge of the law, yet in no case, except perhaps in that of persons charged with criminal offences before justices of the peace, can attorneys *demand* the privileges of an advocate, or are they, on the other hand, expected to possess a scientific knowledge of the law, which more properly comes within the province of counsel."

Then on the connexion between the Bar and Attorneys and Solicitors, it is thus laid down by the learned author :—

"In most of the continental states of Europe, and also in the United States of America, the profession of an advocate is constantly found united with the office of proctor, or attorney and notary. In this country, however, as under the Roman system of jurisprudence, the two functions are kept studiously distinct, it being an invariable object with the judges in Westminster Hall, as Lord Denman recently expressed it, 'that no connexion should exist between the two branches of the profession which would be likely to lead to any malpractice in either.' With a view of furthering this object, it has been held that a member of the bar cannot be either admitted an attorney or serve as a clerk or pupil to an attorney, unless he be formally and voluntarily disbarred, and this even though it was wholly from inadvertence that the application to be disbarred was not made prior to the articles being entered into; nor can a party, after being duly admitted an attorney, and subsequently called to the bar, be re-admitted an attorney unless he be first formally and voluntarily disbarred.

"The same object, of keeping the province of the advocate, and the attorney or solicitor, distinct, has been kept in view on other occasions by our Courts, for it has been held that, even in inferior courts, where attorneys and solicitors ordinarily practise as advocates, they cannot at the same time give evidence of any-

thing which they would otherwise be in a situation to depose to in the cause; and where the justices at quarter sessions have, to avoid similar inconveniences, made an order, giving exclusive audience to barristers, such order has been held valid, and approved of by the Courts at Westminster.

"These rules of law, and regulations of our courts of justice, however, are not made with a view of preventing the members of either branch of the profession of the law from acquiring during their pupillage experience in the duties of the other branch; for, as we shall see, the articulated clerks of attorneys and solicitors are permitted and encouraged by the Legislature, during their period of service, to become pupils of barristers, and may at any time subsequently keep their terms in order to be called to the bar, provided their articles of clerkship are expired or cancelled; or if, having been admitted as attorneys, they have been voluntarily struck off the rolls.

"There are, indeed, a system of authentic regulations in existence, expressly investing the benchers of the inns of court with the government of attorneys, clerks, and officers of the courts belonging to the *inns of chancery*; and, by various old rules and orders, all attorneys are required to be admitted of some of the inns of court or chancery, on pain of being put out of the roll.

"The *inns of chancery*, however, though still under the regulations of the inns of court, are hardly, at the present day, in any way identified with the legal profession, and no professional advantage, direct, or indirect, seems to be derived from admission therein; and the *inns of court* have for a long time been exclusively confined to members of the higher branch of the profession, for as far back as the time of Philip and Mary it was provided, 'that none attorney shall be admitted into any of the houses, and that in all admissions from henceforth this condition shall be implied: that if he that shall be admitted practise any attorneyship, that then *ipso facto* to be dismissed, and to have liberty to repair to the inn of chancery from where he came, or to any other if he were of none before;' and in another order of the Privy Council and judges, it is provided that, 'if any hereafter admitted in court practised as attorneys or solicitors, they to be dismissed and expelled out of their houses thereupon, except the persons that shall be solicitors shall also use the exercise of learning and mootinge in the house, and so be allowed by the bench.'

"The existing rules of the inns of court preclude gentlemen, who have been on the roll of attorneys, from being called to the bar until the lapse of two years from the period of their names being erased from the roll; and, indeed, by a recent rule of all the four inns of court, no attorney or solicitor, or articulated clerk, can be admitted into commons for the purpose of keeping terms for the bar, so that at least three years' retirement from practice are required before an attorney or solicitor can take the degree of barrister."

UNITED LAW CLERKS' SOCIETY.

SEVENTEENTH ANNUAL REPORT OF THE COMMITTEE OF MANAGEMENT.

WE earnestly beg to call the attention of our readers to the following Report of this useful Society. Considering the great advantages which must result both individually and collectively to the Law Clerks, by the extension of the Society—adding to their comfort and promoting their respectability—we trust that every attorney and solicitor will lend his aid, not only by subscribing to its funds, but recommending his clerks to join the association. The list of new donations and subscriptions, which will be found amongst the Advertisements, shows a gratifying increase in the patronage conferred by all branches of the profession. The report furnishes the best argument in favour of the objects of the Society, and every clerk who is eligible to become a member should lose no time in enrolling himself.

"In presenting their *Seventeenth* Report, the Committee have the pleasure of announcing that, except as regards the *Casual Fund*, the progress of the Society, since the last Annual Meeting, has been *highly satisfactory*. Each succeeding year furnishes ample evidence of the usefulness of the Society. *Some* of those members, who were most active in its formation, have been among the first to need, and receive *its assistance*, and many distressed clerks, *not members*, have through the aid of the Society been placed in positions of usefulness and *respectability*, which, without that aid, they would not have been able to occupy.

"The first object of the Society is to make provision for its members in cases of severe illness, but no assistance is afforded, unless it be so severe as to disable a member from following his employment: every *such* member is entitled, *during his affliction*, to an allowance of one guinea *weekly*. In the past year, *twenty-four* members have received this allowance, amounting altogether to 239*l.* 6*s.* 6*d.* Including the payments of *previous years*, the institution has thus assisted its members to the extent of 1,977*l.* 19*s.* 6*d.*

"If any member, from advanced age, blindness, or any other infirmity be *totally* prevented from earning his livelihood, he is entitled to receive *for life*, by *weekly payments*, an allowance varying yearly from 26*l.* to 36*l.* 8*s.* There are, at present, *four* members receiving this allowance: two cases result from paralysis, and the others from *confirmed insanity*; the age of the elder of the latter members is 34 and the other only 29. The interest of a sum of 4,000*l.* is required to meet the payments due to these *four* members.

"On the death of a member, his family are entitled to a sum of 50*l.* Of the cases of ill-

ness, *before adverted to*, *four* terminated in death. *Four* other cases of death have also occurred, and the families of these eight members have received together the sum of 400*l.* If a member survives his wife he is entitled, on *her decease*, to a sum of 25*l.* During the year, *four* such cases have happened, which has occasioned an additional expenditure of 100*l.* The total disbursements for claims, of this kind alone, have amounted to 3,152*l.* 10*s.*

"The payments, *previously mentioned*, are made out of the General Benefit or Principal Fund; out of the Casual Fund, the Society relieves distressed Law Clerks *not members* and *their widows*. The only requirements necessary to entitle applicants to relief, are, that they shall truly need and deserve it, and be recommended by a donor, or member, of *some standing*. The benefit of this fund is extended to the members, and their families, *without recommendation*. *Seventy-eight* cases have come before the Committee during the year; after *careful inquiry* *seventeen* were rejected as *undeserving or illegible*, and the remaining *fifty-three* relieved. Members requiring *slight temporary pecuniary* aid can receive it, *out of this fund*, by way of loan, repayable, *without interest*. A sum of 424*l.* has been expended in meeting these various cases, making the gross expenditure of this fund 3,083*l.* 13*s.*

"The Society still continues to receive the support of the profession; and although it has lost by death several of its early patrons, and amongst others the late Mr. Horace Twiss, their places as subscribers have been supplied by Sir George Grey and other eminent members of the profession. The Committee cannot omit acknowledging here the munificent donation of 50*l.* presented by Mr. Chilton at the last annual meeting.

"The gradually increasing number of claimants for the superannuation allowance has led the Committee to use every exertion to increase the invested capital, the interest of which must *ultimately* bear these payments. The General or Principal Fund was, in April, 1848, 10,329*l.* 2*s.* 9*d.*, since which, 1,959*l.* 8*s.* 11*d.* has been received, and 1,061*l.* 6*s.* 1*d.* expended out of this fund alone. The residue has been invested with the Commissioners for the Reduction of the National Debt. On the 20th May, 1848, the total investments amounted to 10,320*l.* 5*s.* 8*d.*; on the same day in this year, they amounted to 11,328*l.* 12*s.* 9*d.* The Committee have *much pleasure* in reporting that the contributions of the members *alone*, during the year, have exceeded 1,200*l.*

"The numerous claims for relief out of the Casual Fund have entirely exhausted it. The Committee commenced the year with a balance in hand of 103*l.* 8*s.* 2*d.*, and have since received 382*l.* 7*s.*; the whole of these sums has been expended, and a small balance left against the Society in favour of the Treasurer.

"Though not in existence until 1832, the Society is now expending in actual relief more than 1,300*l.* a year. Increase of years will necessarily increase that *expenditure*, and for

which provision is being *gradually made*. A *reserved fund* is slowly, but safely, *accumulating*, which will guarantee the fulfilment of its obligations, whatever emergency may arise. The formation of that fund, has been accomplished through the assistance afforded by the Profession; the Committee gratefully acknowledge that aid, which has also enabled the Society to enlarge its benefits, and encouraged the formation amongst its members of habits of prudence and forethought. While the committee regret that they have for the first time to report *an exhausted Casual Fund*, they have the satisfaction of remembering it has been expended in relieving the necessities of distressed and deserving law clerks and their families. The Committee hope they shall be able to report, at the next Anniversary, *a more favourable condition of this fund*, and that the relief afforded *during the year* has not in any way been diminished in amount for want of *adequate means*."

"HARRY G. ROGERS, Secretary.

"*Fremasons' Tavern, June 19, 1849.*"

STATUS OF ATTORNEYS.

A CONSIDERABLE part of the angry feeling which has unfortunately found its way into this discussion, arose from the two assertions of "An Attorney," that his brethren, *as a class*, were dis-esteemed by the public generally, and that the cause of such dis-esteem was the introduction into the profession of ill-educated persons who stood in the situation of *paid articled clerks*, and were denominated "scamps." This statement, however, was accompanied by an admission that there were several most honourable exceptions to the rule; and it would have been well for the decorum of the debate if "A. Z." and "A Paid Articled Clerk" had considered themselves of the number of those "honourable exceptions," and entered upon the discussion of the facts asserted by "An Attorney," without the expression of any personal feeling. We cannot, however, refuse the insertion of the following replies, which we give as we received them, except one passage, which we presume the writer will in his cooler moments thank us for expunging.

We trust that in the further communications which we may receive on this subject, the following points will alone be considered, namely,—1st, Whether society generally does entertain a bad opinion of the profession of attorneys, and to what extent? 2ndly, What are the causes which have produced that opinion; and 3rdly, In tracing those causes, let our correspondents also take into consideration the *remedy* of

the evil. If the result of the experience of our readers be stated, and the conclusions to be drawn from the facts be candidly given, the discussion will be useful and the space we afford it well applied; but if the controversy be mixed-up with personalities between the several classes of the profession, it will impede the exertions of those who are anxiously seeking to improve and benefit the profession.

To the Editor of the Legal Observer.

SIR,—I feel personally obliged to you for the impartiality you have displayed in the controversy respecting the "Status of Attorneys," by inserting my letter, as well as those of other managing clerks similarly situated, in reply to "the Attorney," who charges upon our devoted heads all the mischief and rascality to be found in the profession. I observe by your number of 14th July, that he has renewed the attack, and, as I think, with greater vehemence.

In allusion to me and to your correspondent "A paid Articled Clerk," he asks, "how are these gentlemen to obtain a livelihood when out of their articles and admitted attorneys?" which he answers thus:—"Not having any connexion of their own, they rob their former masters and benefactors of a portion of their connexion, or *make law* in a disreputable manner."

This I consider grossly and vulgarly personal, and altogether *unbecoming the Attorney's station*; but my reply is, that I will do neither;—I will not "rob my former benefactor of his connexion," nor will I "make law by any disreputable means." On the contrary, I do not despair;—I am not without pride, which sustains me;—I am not without hope, which encourages me in the belief that I shall be able, at the end of my clerkship, to earn for myself an honourable subsistence, in spite of the malignant and unchristian assertions of the Attorney.

Your correspondent G. A., who writes from Southampton, agreeing, as he does, with the Attorney in condemning the practice of promoting paid clerks to the grade of the solicitor, grapples more fairly with the question when he states that it is "*the individual*, and not the *class*, that comes under the censorship of society." This is the plain truth, and why have not these gentlemen the candour and the manliness to apply the same argument to the other class, "the managing clerks," and not condemn the whole indiscriminately? Why, Mr. Editor, I could give you the names of at least eight or ten attorneys who have, to my own knowledge, *decamped* from the neighbourhood in which I live, some of them deeply in debt, and who have involved in ruin many virtuous families,—the last instance being of recent date, when the individual fled leaving liabilities to a very large amount, upon which he has since paid his unfortunate creditors a dividend of less than one shilling in the pound. These gentlemen, bear in mind, were of long standing

in the profession, and who did not owe their rise to the pernicious system complained of, but were considered "all honourable men" and *legal luminaries*, and as such were honoured and trusted by their clients and friends;—how, alas! did they repay their confidence?

Now these are the men who bring the profession into disrepute and lower it in the public estimation. But, alas! when I am told that the Bench, the Bar, the attorneys, and the members of the Law Society participate in the views of the Attorney, and that we are out-lawed by general opinion, what can we poor devils of paid clerks hope to accomplish in the way of combating the bad feeling so deeply rooted and so general? This task I must leave in abler hands than mine, as well as that of answering the other part of the Attorney's first letter. I cannot, however, quietly submit to the imputations thrown upon the class to which I belong, and I deeply regret to learn that the ill-natured opinion of the Attorney is so general as to be almost universal amongst all whose good opinion I should be desirous to conciliate and proud to enjoy; and that a paid clerk, on becoming a member of the profession, has so much bad feeling and prejudice to overcome before he can convince any of his professional superiors whom he may happen to approach that he is a respectable member of society, or rather that he is not "*a black sheep of the law*," simply because he was guilty of the enormity of receiving a salary under articles.

The Attorney complains that our letters (alluding to the Paid Articled Clerk's and mine,) "are not quite becoming our station." To this I answer, that if I have written aught that may be *personally* offensive, I regret it, as I am at all times willing and desirous to pay every proper respect and deference to my superiors in rank and station; but let the Attorney remember that he has done the managing clerks the honour of commencing a wanton and gratuitous attack upon them, and I think he need scarcely feel surprised if, (losing all patience,) the language they use to him in reply be a little more *earnest* than *polite*; and, of course, after what he has written and published, any show of courtesy from a managing clerk to him would be sheer hypocrisy.

To my fellow labourers, the Paid Articled Clerks, who read your journal, I would address a word at parting. To them I say, "*Courage, mes frères*." Let us pursue the onward path of virtue, of honour, of duty and religion, regardless alike of the envy, hatred, malice, or uncharitableness of all, *whether in or out of the profession*. By this conduct we shall best secure our own individual happiness and promote the comfort and happiness of those with whom we may be connected, whether professionally or otherwise. This will also enable us to bear with becoming firmness every reverse of fortune, and will be the surest means of bringing a man "*peace at the last*;" and especially, whilst sojourning here will it enable

those who practise it successfully to encounter and resist

Th' oppressor's wrong, the proud man's contumely,
The insolence of office, and the spurns
That patient merit of th' unworthy takes.

A. Z.

SIR,—“An Attorney,” in his last letter, supposes that the question must have occurred to you, how the paid articled clerks, when admitted, having no connexion of their own, (an assumption,) are to obtain their livelihood, and then he proceeds to answer the question in a manner which only the more discloses the animus by which he is actuated against the class to which I belong. Now, if we grant that all his answer is true, (namely, the robbing of their former benefactors, &c.) what has this to do with the unenviable position of attorneys? And if the liberal-minded attorney does not fear being so robbed, why should your correspondent, who is not likely to incur so direful a risk? So much is “An Attorney's” vision affected by prejudice, that to his mind everything that is low, base, and cunning is to be ascribed to, and expected from, this well-abused class. Of course, it never entered into his thoughts that one of the liberally-educated and premium-paying class could be, by any possibility, guilty of the act referred to. Oh, no! But, Sir, I well remember many such attempts being made, and particularly an attempt by one who had all the advantages “An Attorney” could desire, and who, in his efforts against his former master, received most strenuous paternal assistance; but, as the young gentleman eventually emigrated to a distant colony, it is presumable his and the paternal praiseworthy efforts did not meet with corresponding success.

That anything would effect a change in the mind of “An Attorney,” I did not at all expect, and that he should persist in his assertions is quite natural; but, as to his convincing proofs, it is evident they exist only in his own imagination. He says he is now in a position to defy the consequences of the evil system, personally. By this I suppose he means that he is an exception to attorneys generally, (and that he is so may be easily believed,) and therefore not included in the “unenviable position.” I beg leave most heartily to congratulate him. And I must add, that I cannot too much admire the noble disinterestedness which prompted him to descend from his high estate to give his less fortunate brethren the benefit of his “suggestions,” which will doubtless be duly appreciated by them.

As to the latter part of “An Attorney's” first letter, I do not feel myself at present properly authorized to offer an opinion upon such an important point, but, personally, I have not the slightest objection to “An Attorney” donning a gown.

“An Attorney” asserts that the members of the profession generally agree that he has rightly pointed out the cause of the bad

opinion entertained of attorneys. This assertion, I must acknowledge, has greatly astonished me, and is the very reverse of the remarks I have heard made by many members of the profession, including gentlemen high at the Bar. In short, their observation on "An Attorney's" letters have been anything but complimentary to him. I begin, however, strongly to suspect that "An Attorney," although probably a very good-natured and respectable sort of character, is in the possession of some little peculiarities, which his friends, members of the Bench and the Bar and attorneys, have, in a jocular humour, thought fit to indulge. Indeed, his observations as to subverting the order and grade of society evidently betray the existence of these little whimsicalities. Perhaps, however, fate has played him a fantastic trick by sending him into this world some two centuries after his time, or it may be by placing him in a wrong quarter of our terrestrial globe. He ought evidently to have been born and reared in the more congenial clime of Hindostan, for there, it is said, the inhabitants are divided in classes or castes having fixed occupations, and, as a descendant of the Brahmins, "An Attorney" would have had an hereditary right to become a philosopher or lawgiver; or, on the contrary, as a descendant from the "Sudras," he must inevitably have become a handicraftsman; and on this latter supposition,—which, in consequence of his particular qualifications, forces itself upon me,—I feel very great confidence in asserting that he would have been a very harmless, but at the same time a most determined, stickler for the rights and privileges of his order, the reparators of pots and pans.

"An Attorney" observes, that the tone of my last letter was not quite becoming my station. I regret this, and hope that my present letter will not be deemed open to the same complaint.

By the way, as to the payment of the Stamp Duty, your correspondent, "One of the Prescribed," is quite correct, so far as my information extends.

A PAID ARTICLED CLERK.

[We wish this discussion could have been carried on without harsh expressions on either sides; but, as we inserted (though, as we said at the time, reluctantly) the entire letter of our first correspondent, in which he visited the parties whom he censures with the name of "scamps," we cannot exclude this *re tort*, though far from *courteous*. Let us hope "the Attorney" will magnanimously abstain from further vituperation, and that both parties will adhere strictly to the discussion of the facts, without personal reflections on either.—ED.]

SIR,—I have read with great interest the various letters you have given circulation to on this subject, but cannot wholly reconcile myself to any view yet put forth. I regret that I must subscribe myself with those believing that, as a class, attorneys are not well regarded in their social position,—far less so than their

general qualities for education, wealth, and demeanor would warrant; whatever respect they may obtain is of an individual character. This admitted, the question is, how does this happen? It is notorious that in the profession, of late, the term "attorney" is cast aside, while that of "solicitor" is readily acknowledged, and this gives me a clue to the subject.

It cannot, I think, be denied that, as a body, practitioners in Chancery are more urbane, *inter se*, than those at Common Law,—and why? Simply, that not having the same facilities to upset proceedings by quibbles and objections to mere matters of form, (or at least the certainty of the Courts allowing to amend,) they have no desire to trip each other up on such occasions, but are accustomed to point out any error or omission to their opponents, and so give them the opportunity of amending; and to this there are but few exceptions. How very different it is at Common Law, where, by quirks and quibbles, (practised, I regret to say, almost universally,) proceedings may be wholly upset; and how can suitors respect, as a class, men who, regardless of the merits of a case, would snap a judgment for the delay of an hour,—or treat important proceedings as a nullity for the want of a signature, perfectly useless in itself,—or demur to pleadings for the omission or insertion of, perhaps, a single word, thereby delaying, and in many cases wholly depriving the other party of his just rights, not to mention the augmentation of the costs by such means. It is true there must be defined rules of practice at Common Law, but surely they can be as readily relaxed as in Chancery; and it seems to me that so long as your pleader will tell you he can demur to any declaration or other pleading,—so long as mere omissions in point of form are to be allowed to impede and frustrate the course of justice,—so long, I fear, will attorneys hold a very unenviable status in society.

July 23, 1849.

E. G.

SIR,—I am sorry to differ from you in the opinion you entertain as to the estimation in which our profession is held by the public in general, and I think that the remarks of "An Attorney," in your last number upon this point, fully bear out the opinion of the greater part of your readers.

But, in addition to those remarks of "An Attorney," who can fail to admit that we are disliked at all the clubs in London, at least at all those of which a *gentleman* would like to become a member. At some clubs, I believe, they actually refuse to admit attorneys and solicitors, and at others nothing but favour or the support of some powerful member can procure their election. This cannot arise from any objection to the individuals who apply for admission, as your correspondent "G. A." would, I dare say, tell you, but it arises but too plainly from the antipathy which the public bear towards us as a *class*; and this is the more palpable when we see the number of "Gents," to make use of the very expressive

cant word of the day, that at this moment frequent our west-end clubs.

I cordially concur with "A. U." in his suggestion as to the rule which should be laid down as to the fee to be paid with articulated clerks, as I firmly believe that there is nothing more detrimental to the profession than the plan which is too often adopted of articling useful old clerks who threaten to leave their employers unless they do so, and with whom their employers could but ill part. These are chiefly the men who damage our profession; these are the men who most commonly misconduct themselves;—men who are raised above their station and above their education, and who, although they were worthy and highly honourable men before their elevation, yet, when elevated, know not how to conduct themselves, because they were not educated for their superior position,—because, in fine, they were not born or bred gentleman.

W. H.

July 23, 1849.

THE CONSOLIDATION OF BANKRUPTCY BILL.

AMONGST the amendments which this bill has undergone are the following:—

The clauses Nos. 181 and 182 in the former bill, rendering void conveyances and payments and transactions within two months of the fiat, are struck out.

Executions are not to be deemed acts of bankruptcy; but there must be an actual sale, as well as seizure, in order to enable the judgment creditor to retain the proceeds of the execution.

But article 183 of the former bill is retained, rendering warrants of attorney, cognovits, and judges' orders, made within two months of the fiat, void, whether in contemplation of bankruptcy or not, (s. 135 of the reprint).

The clauses relating to deeds of arrangement with creditors are modified by making the proportion which is to bind the rest *six-sevenths* instead of nine-tenths. This is an alteration made at the instance of the Incorporated and other Law Societies.

The constitution of the Court of Bankruptcy remains nearly in the same state as now, except that the London Commissioners are to be reduced as vacancies occur to Four, and the like as to Registrars; with power to alter the country districts. The proposed increase of salaries appears to be negated for the present.

The Courts are to sit daily, except on certain holidays; and in the vacations, a vacation Commissioner is to attend, and certain duties may be performed by the Registrar in the absence of the Commissioner.

As to the Bankrupt's Certificate, a dis-

inction is to be made in cases wholly arising by misfortune from those which are partly so, and lastly, from cases of misconduct.

The structure of the bill has been altogether altered. Instead of a short act with a long schedule containing the several "articles" of the new code, the common form of statutes has been adopted, and the bill now consists of 288 sections, with a useful schedule of repealed statutes and the forms to be used in the execution of the act. It extends to 117 pages. The last print was 134 pages.

SELECTIONS FROM CORRESPONDENCE.

COSTS AGAINST EXECUTORS.—COUNTY COURTS.

As the cheapness of the County Courts is frequently much vaunted, a correspondent has sent us an order against the executors of a deceased debtor, which proves that the process under the act is far more expensive than in the Superior Courts. The order shows that the costs amounted to 8*l.* 2*s.* Under the 29th of the Rules framed by the judges for putting the act into operation, the defendants were obliged to pay the costs of the action, although it was proved they had not assets of the deceased in their hands: the judge giving judgment in the following words,—"Take the usual judgment against executors." Several instances have come to the knowledge of our correspondent, where this rule has operated very oppressively.

UNQUALIFIED PRACTITIONER.

"A Subscriber" inquires "whether he will have any difficulty in obtaining his certificate, from the fact of his having, whilst engaged as a managing clerk, transacted on his own account a little *conveyancing* business brought to him by his relatives and immediate friends?"

If the business were done "for or in expectation of any fee, gain, or reward, directly or indirectly," he will be liable to a penalty of 50*l.* for each offence; and such business being in contravention of the statute of 44 Geo. 3, c. 93, s. 14, it will be for the Court to decide whether the applicant ought to be admitted on the roll.—ED.

DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From 26th June, to July 20th, 1849, both inclusive, with dates when gazetted.

Barker, George Morris, and Henry Moore Griffiths, Birmingham, Attorneys Solicitors, and Conveyancers. June 26.

Haywood, James, and John Webb, Birmingham, Attorneys and Solicitors. June 26.

Shaw, Charles, and George Baynes, 47, Fish Street Hill, Attorneys and Solicitors. July 13.

PERPETUAL COMMISSIONER.

Appointed under the Fines' and Recoveries' Act, with date when gazetted.

Tyndall, William, Liverpool, in and for the county of Lancaster. July 6.

MASTERS EXTRAORDINARY IN CHANCERY.

From 26th June, to July 20th, 1849, both inclusive, with dates when gazetted.

Darbishire, Robert Dukinfield, Manchester. July 13.

Fleetwood, Thomas Perrior, Maidstone. June 26.

Hartley, William, Settle. July 17.
Holford, George, Manchester. June 26.
Hudson, Alfred Ricketts, Pershore. July 20.
Stretton, Clement, Leicester. July 20.
Sutcliffe, Richard Clegg, Brown-hill, Burnley. July 6.

NOTES OF THE WEEK.

ILLNESS OF LORD DENMAN.

We regret to learn, that the illness of Lord Denman is of so serious a character as to prevent his Lordship from attending to the business at the Judges' Chambers, which, during the continuance of the Circuits, is peculiarly pressing and weighty. To prevent the inconvenience that must necessarily arise from the absence of a judge at chambers, at this period, it has been arranged that the Lord Chief Baron should leave his circuit, and attend at chambers

instead of Lord Denman. Mr. Serjeant Gaselee has undertaken to assist Baron Alderson on the Home Circuit, during the absence of Sir F. Pollock.

APPOINTMENT TO THE VACANT JUDGESHIP.

The profession and the public will be equally rejoiced to learn, that as we ventured to anticipate, (*ante*, p. 204), Mr. Serjeant *Talfourd* has been selected to fill the seat in the Court of Common Pleas, vacant by the death of Mr. Justice Coltman. The learning, urbanity, and high principle which have uniformly and eminently distinguished the learned Serjeant in his lengthened career as an advocate, sufficiently account for the universal satisfaction manifested upon his promotion to the Bench.

Mr. Talfourd was called to the Bar by the Society of the Middle Temple, on the 9th Feb. 1821, received the appointment of Serjeant-at-Law in Hilary Term, 1833, and was named in the Royal Warrant of 24th April, 1834, taking rank with other serjeants next after the Junior King's Counsel at that time, and before all future King's Counsel. He was promoted to the rank of Queen's Serjeant by Lord Lyndhurst, just before the change of administration, —a graceful act to a political opponent, but of kindred genius. He succeeded to the office of Queen's Ancient Serjeant on the promotion of Sir Thomas Wilde to the dignity of Lord Chief Justice of the Common Pleas, in July, 1846.

RECENT DECISIONS IN THE SUPERIOR COURTS.

AND SHORT NOTES OF CASES.

Rolls' Court.

Attorney-General v. Chambers and others.
July 18, 1849.

COAL AND CULM MINES UNDER SEA SHORE.
—INSPECTION.

Upon motion, an order was made for the Commissioners of Woods, &c., to inspect certain coal or culm mines for the purpose of ascertaining how far they extended under the sea shore, and how much coal or culm had been gotten therefrom; the evidence being necessary in the cause.

This was a motion on behalf of the Commissioners of her Majesty's Woods, Forests, and Land Revenues, that they might be at liberty to inspect and examine certain coal and culm mines worked by the defendants and others by means of four shafts which were sunk in a certain piece of land called Old Castle Farm, near Llanelly, Carmarthenshire. It was sought to ascertain how far the mines

extended under the sea shore, and the quantities of coal or culm which had been raised from such part between high and low water mark.

Turner and Maule in support of the motion.
Goldsmid and Dickenson for the defendants.

The *Master of the Rolls* said, that the evidence sought by the motion was necessary to be procured in the cause, and the motion must, therefore, be granted.

July 18.—*Edgley v. Lloyd*—Order for production of documents.

— 19.—*Bainbridge v. Baddeley*—Stand over.

— 19.—*Brown v. Brown*—Order changing solicitors discharged with costs, to be paid by next friend.

— 19.—*Minns v. Stant*—Leave to amend bill by adding parties—Costs to be costs in the cause.

— 19.—*Grace v. Hood*—Exceptions to *Master's* report finding answer insufficient, overruled.

— 20.—*Attorney-General v. Jesus Hospital*
Cur. ad. vult.

July 20.—*Hydev. Edwards*—Demurrer to bill allowed, without costs.

— 20.—*Attorney-General v. Aubrey*—Charity scheme confirmed.

— 21.—*Attor.-Gen. v. Moises*—Master's report as to leasing charity property, confirmed.

— 21, 23.—*Rudge v. Winnall and others*—Stand over.

— 23, 24.—*Chambers v. Howell*—*Cur. ad. vult.*

Vice-Chancellor of England.

In re 4 & 5 Vict. c. 35; Ex parte Tuffnell.

June 20, 1849.

COPYHOLD ENFRANCHISEMENT ACT.—SERVICE OF PETITION ON COMMISSIONERS.

Application refused to dispense with service of order for investment of a sum of money paid into the bank under the 4 & 5 Vict. c. 35, and 6 & 7 Vict. c. 23, on the Copyhold Commissioners.

THIS was an application to dispense with service on the Copyhold Commissioners of an order for the re-investment of a sum of money in the title of "*Ex parte the Copyhold Commissioners, in re Barnsbury Manor.*" By the 4 & 5 Vict. c. 35, s. 73, it is enacted, that "all monies to be paid under this act for enfranchisement from the lord's right shall be paid to the lord of the manor, his heirs, or assigns, where he shall be absolutely seised as tenant in fee simple in possession of the manor, or where, as trustee for sale or otherwise, he has power to give an effectual discharge for such monies; and where such lord shall be under any legal disability, such money, subject to any allowance which may be made thereout in respect of deferred payments hereinbefore mentioned, shall, in case the same shall in the whole amount to or exceed the sum of 200*l.*, with all convenient speed be paid into the Bank of England, in the name and with the privy of the Accountant-General of the Court of Exchequer, to be placed to his account there *ex parte* 'The Copyhold Commissioners,' pursuant to the method prescribed by 'the 1 G. 4, c. 35,' and the general Orders of the said Court, and without fee or reward, and shall, when so paid in, therein remain until the same shall, by order of the said Court, made in a summary way upon petition to be presented to the said Court by the person or persons who would have been entitled to the rents and profits of the said manor had no such enfranchisement been made, be applied in the purchase or redemption of the land-tax," &c.

By the 6 & 7 Vict. c. 23, s. 12, it is provided, that "if any manor is subject to the payment of any fee farm-rent or other charge not exceeding in amount the annual quit-rents payable to the lord, the Commissioners may direct that so much of the money to be received for enfranchisement shall be paid into the Bank of England, in the name and with the privy of the Accountant-General of the Court of Chancery, to be placed to his account there, *ex parte* the Copyhold Commissioners, and be applied under the directions of the Court of Chancery in redeeming the said land, and in

indemnifying the owner of such land, as provided for in the case of other money directed to be paid into the bank," under the 4 & 5 Vic. c. 35.

Sayres, in support of the application, submitted, that the service on the Commissioners would materially increase the expense, and that as the sum to be invested was small, the service should be dispensed with.

The *Vice-Chancellor* said, that the application must be refused, as the service on the Commissioners could not be dispensed with, because, by placing the stock in the title proposed, the control of the Commissioners thereon would be in some degree varied.

Gennys v. Radcliffe. May 23, 1849.

INJUNCTION. — TRUSTEES OF TURNPIKE ROAD.

Injunction to restrain the trustees of a turnpike road from continuing in possession of certain land which was so taken possession of under an agreement, refused with costs, on the ground that the plaintiff had not made out any case for granting an injunction.

THIS was an action for an injunction to restrain the defendant, as clerk of the trustees of the Tiverton and Tavistock turnpike road, from continuing in possession of certain lands purchased from the plaintiff. It appeared, that on March 31, 1848, the trustees entered into an agreement with the plaintiff, under the powers of an act of parliament enabling them to form a turnpike road, for the purchase of a piece of land for 360*l.*, and the abstract of title was to be delivered within a week. The abstract was not delivered within the time specified, and the trustees, when it was delivered, objected to it as being incomplete. The trustees had taken possession of the land under an express agreement, upon paying the sum of 360*l.* into the bank in the joint names of the plaintiff's solicitor and another person appointed by the defendants. A correspondence and several meetings had taken place, in which the plaintiff accused the defendants of delay, and threatened to take proceedings if the contract were not completed.

Bethell and Selwyn in support of the motion; *Stuart and Follett*, contra, contended that the trustees had done all their part of the contract, and that the injunction ought not to be granted.

The *Vice-Chancellor* said, that the statement on the bill that a good title had been delivered and had been accepted by the defendants, was not substantiated, and there was, therefore, different cases made out by the bill and the affidavits. The defendants had taken possession and commenced the works under the agreement on paying the purchase-money into the bank in joint names. There was, therefore, no case made out to induce the Court to grant the injunction, and the motion would be refused with costs.

July 18.—*Ex parte Apps, In re Stafford and Peterborough Railway Co.*—Master's report inserting name in list of contributories, confirmed.

July 20.—*In re Irish West Coast Railway Company*—Order for winding up.

— 20.—*Hedges v. Hedges*—Injunction dissolved with costs.

— 21.—*Mornington v. Mornington*—Petition granted and reference to the Master.

— 21.—*Lombe v. Stroughton*—Judgment on construction of will.

— 23.—*Dagleish v. Jarvis*—Exparte injunction granted, restraining pirating of designs on muslin goods.

— 19, 23.—*Evans v. Evans*—Cur. ad. vult.

— 24.—*Lomas v. Nightingale*—Injunction granted restraining farmer selling straw off farm, contrary to contract.

— 24.—*Webster v. Parratt*—Injunction granted to restrain proceeding with action at law.

Vice-Chancellor Knight Bruce.

Harris v. Hamlyn. June 12, 1849.

COSTS OF SOLICITOR TO SUITORS' FUND APPOINTED GUARDIAN TO INFANT DEFENDANTS.

Held, that the plaintiff in a foreclosure suit was to pay the costs of the solicitor to the Sutors' Fund, who had been appointed, at the plaintiff's request, guardian to appear and defend for infant defendants.

This was a foreclosure suit, in which the solicitor to the Sutors' Fund had been appointed guardian under the General Orders, on the plaintiff's application, to appear and defend for some infant defendants.

Henson for the plaintiff; Taylor, for the solicitor to the Sutors' Fund, asked for his costs.

The Vice-Chancellor held, that the plaintiff ought to pay the costs rather than the officer of the Court, who had been appointed at the plaintiff's request and for his convenience.

Order accordingly.

July 18.—*Wood v. North Staffordshire Railway Company*—Stand over.

— 18.—*Exparte Hall, in re North of England Joint-Stock Banking Company*—Master's report inserting name in list of contributories affirmed.

— 19.—*Exparte Davidson, in re Marylebone Joint-Stock Banking Company*—Motion refused, without costs, to strike out name from list of contributories.

— 20.—*In re Bridgewater and Minehead Railway Company*—Order for winding up.

— 20.—*In re Royal Thames Steam Navigation Company*—The like.

— 20.—*Attorney-General v. Dew*—Stand over.

— 21.—*Buckley v. Buckley*—Appointment of two trustees only, where three were directed by the will, refused.

— 23.—*Silvester v. South Eastern Railway Company*—Exparte injunction refused to restrain railway company from running their trains—with leave to move on notice.

— 23.—*Carrington v. Pell*—Bill dismissed, without costs, and without prejudice to action at law.

July 23.—*Esparte Boulton, in re Wakefield*—Stand over.

— 24.—*Silvester v. South Eastern Railway Company*—Stand over.

Vice-Chancellor Wigram.

July 19.—*Marquis of Londonderry v. Ovingdon*—Held, that the perpetual curate was not a necessary party to a suit against occupiers by the improper rector for tithes—Order by consent dismissing bill against perpetual curate, with costs.

— 21.—*In re Nesbitt's Settlement*—Order for payment out of Court of trust fund to new trustees.

— 24.—*Brogden v. South Eastern Railway Company*—Part heard.

Queen's Bench.

(Before the Four Judges.)

Regina v. Owen. May 5, 1849.

QUO WARRANTO.—CLERK TO COUNTY COURT.—INABILITY.

Rule absolute for quo warranto to clerk of County Court appointed by the judge with the approbation of the Lord Chancellor where the former clerk became insolvent.

Semble, that the word inability in the 9 & 10 Vict. c. 95, s. 24, means mental or physical inability, and not insolvency.

A RULE nisi had been obtained in this case for an information in the nature of a quo warranto against the defendant, who had been appointed to the office of clerk to the Merionethshire County Court under the following circumstances:—It appeared that Mr. Jones, the judge of the Court, had appointed the relator, Mr. Williams, as clerk, but that, upon his becoming insolvent, he had been removed and the defendant appointed in his stead, with the approbation of the Lord Chancellor.

By the 9 & 10 Vict. c. 95, s. 24, it is enacted, that "for every Court under the authority of this act there shall be a clerk, who shall be an attorney of one of her Majesty's Superior Courts of Common Law, and whom the judge shall be empowered to appoint, subject to the approval of the Lord Chancellor; and, in case of inability or misbehaviour, to remove, subject to the like approval." And by the 10 & 11 Vict. c. 102, s. 10, jurisdiction in matters of insolvency is transferred from the Court for the Relief of Insolvent Debtors on Circuit to the County Courts of the respective districts, and by section 5 the clerks are to perform the duties belonging to the official assignees, who are, by the 1 & 2 Vict. c. 110, s. 65, liable to be removed on account of "incapacity, disability, misconduct, or absence from the realm of any such assignee, or other cause of unfitness."

Cowling and Baxter, against the rule, contended that the relator had been properly removed from his office of clerk inasmuch as the words "inability or misbehaviour," in the 9 &

10 Vict. c. 93, s. 24, authorised the judge in so doing; and that *insolvency* was an *inability*, as the clerk now had to perform the duties of an official assignee who could be removed by the Lord Chancellor for any cause. *Ex parte Watts*, 1 Ross, 436.

The *Attorney-General* and *Townsend*, in support of the rule, urged that *inability* only meant mental or physical inability, as was manifest from section 26, which empowered a clerk, with the approval of the judge, to appoint a deputy, or the judge in case of the inability of the clerk to do so, which clearly referred to his becoming insane and therefore unable to resign or appoint a deputy.

The Court made the rule absolute.

Common Pleas.

Thorogood, admr., v. Bryant. June 20, 1849.

ACTION UNDER LORD CAMPBELL'S ACT.—
COMPENSATION FOR DEATHS BY ACCIDENT.

In an action for compensation to administratrix for testator's death, which was alleged to have been caused by the defendant's servant's neglect, the judge who presided at the trial directed the jury that if in their opinion the death happened from pure accident, or might have been avoided by due care on the part of deceased or the driver of the omnibus in which he rode, they would find for the defendant; and that if the death was attributable to the neglect of the defendant's servant, to find for the plaintiff: Held, a right direction, and a rule nisi for new trial was discharged.

THIS action was brought by the widow of Mr. Thorogood, under the 9 & 10 Vict. c. 93, s. 2, as administratrix of the deceased, to recover compensation for his decease, which was alleged to have been caused by the neglect of the defendant's servant in driving an omnibus belonging to the defendant. The intestate was a passenger, in January, 1849, in an omnibus running from Bishopsgate Street to Hackney, and was put down opposite Seabright Street, Shoreditch, a few yards from the pavement on the near side. The defendant's omnibus passing on the same side, the intestate was knocked down and run over, and shortly afterwards expired in consequence of such injuries received. Mr. Justice Williams, who presided at the trial, directed the jury, that if they were of opinion the accident was caused by the wrongful act, neglect, or default of the defendant's servant, they would find for the plaintiff; but that if in their opinion the death was purely the result of an accident, or that by the exercise of ordinary care on the part of the deceased or of the driver of the other omnibus, the accident might have been avoided, to find for the defendant. The jury having found a verdict for the defendant, a rule nisi for a new trial had been obtained on the ground of misdirection, and that, although the other driver might have been guilty of neglect in setting the deceased down in the road when the de-

fendant's omnibus was behind, yet if the driver of the latter had by his negligence conducted to the accident, the defendant was still liable.

Talfourd, Q. S., against the rule, cited *Davies v. Mann*, 10 M. & W. 546; *Humphreys*, Q. C., and *J. Cobbett*, in support of the rule, cited *Butterfield v. Forrester*, 11 East, 60.

The Court said, that generally, in cases of careless or negligent driving, the plaintiff was entitled to maintain an action for injuries sustained by him, unless he himself was guilty of such neglect as would excuse the defendant; but here the accident was not the result of the personal neglect of the plaintiff's intestate. The plaintiff had, however, entered into a contract with the master of the omnibus in which he travelled, by selecting it in preference to others, and having employed it to convey him, and therefore if that omnibus conducted to the accident, the action could not be maintained. As the jury had found for the defendant, they must have considered that the driver of the intestate's omnibus was conducive to the accident. The case of *Bridge v. Grand Junction Railway Company*, 3 M. & W. 246, was similar to the present, and the rule must be discharged.

Exchequer.

Ness v. Armstrong. May 8, 30, 1849.

LIABILITY OF EXECUTOR RECEIVING DIVIDENDS OF TESTATOR.—EXECUTION OF PARTNERSHIP DEEDS. — JOINT-STOCK COMPANY.

Where an executor has received the dividends accruing after the death of his testator, but has not executed the deeds of the partnership, held, not to render him liable as a member in a proceeding by sci. fa. under the 7 G. 4, c. 46, s. 13.

THIS was a proceeding by way of *sci. fa.* under the 7 G. 4, c. 46, s. 13, by a creditor of the Newcastle-on-Tyne Joint-Stock Banking Company, who had recovered a judgment against the public officer of the company, and who now sought to make the defendant liable as the executor of a deceased member. It appeared that by the rules of the company, executors were not entitled to receive the dividends due to deceased members until the partnership deeds were executed. The defendant had, however, without so executing the deeds, received several dividends which had accrued due after the testator's death. A verdict having passed for the plaintiff, a rule nisi had been obtained to enter a nonsuit instead of such verdict.

Knowles and *Manisty* showed cause against the rule, and contended that as the executor had received the dividends due on the shares notwithstanding the above-mentioned rule of the company, he was estopped from disputing the membership.

Watson and *Rew*, for the defendant, in support of the rule.

The Court held that, as the executor had not signed the deed of co-partnership, the mere receipt of the dividends did not render him liable as a member of the company, and the rule to enter a nonsuit in lieu of the verdict for the plaintiff was, therefore, made absolute.

Court of Exchequer Chamber.

Regina v. Brisby. May 2, 1849.

DISOBEDIENCE TO ORDER IN BASTARDY.—INDICTMENT.

Held, (upon appeal to the Exchequer Chamber,) that an indictment may be sustained for disobedience to an order in bastardy under the 7 & 8 Vict. c. 101, s. 3, where there has been a supersedeas entered to a former order, and the conviction was confirmed.

On January 1, 1849, two justices of the peace acting in Petty Sessions made an order on the defendant, under the 7 & 8 Vict. c. 101, s. 3, as the putative father, for payment to the mother of a bastard child of a certain sum weekly. The proceedings, however, being informal, a supersedeas was entered, whereupon another summons was issued under the 2nd section, and a second order was made. The defendant refused to obey this order, and had therefore been indicted at the last Epiphany Sessions for Bedfordshire for a misdemeanor. The prisoner was convicted, and the point whether the second order was void or not was reserved for the opinion of this Court.

Cressy, for the prisoner, contended that the justices had not the power to issue the second order, the first being in existence, and that the second order was void, and that, therefore, the indictment could not be sustained for a breach thereof.

J. J. Johnson in support of the conviction.

The Court said, that the second order was valid, and that an indictment for disobedience thereto was good, and affirmed the conviction.

Nisi Prius.

(Coram Wightman, J.)

Blaine v. Richardson. June 22, 1849.

LANDLORD AND TENANT.—ACKNOWLEDGMENT OF TENANCY.—RECEIPTS GIVEN AS AGENT.

In an action to recover rent of certain premises, held, that the payment of rent was an acknowledgment of tenancy without an attornment, and that the plaintiff was entitled to recover where the receipts for the rent were given as the plaintiff's agent, although the premises were originally let to defendant by the agent himself, but were subsequently purchased by plaintiff.

This action was brought to recover a sum of 23l. for the use and occupation of a house situate at Camden Town. The defendant had

originally hired the premises from a Mr. Pritchard, who afterwards became bankrupt, and his assignees sold the property to Mr. Blaine. Rent had been paid to Mr. Pritchard as agent to the plaintiff, and other premises were let by him as the plaintiff's agent to the defendant.

H. T. Cole for the plaintiff; Coles, for the defendant, contended that the premises had been originally let by Mr. Pritchard, and that therefore an attornment was necessary to support the plaintiff's case.

The Court, however, held, that, as to part of the premises, there was a distinct letting by Mr. Pritchard, as the plaintiff's agent, and as to the other part, that money had been paid as rent to Mr. Pritchard as the plaintiff's agent, and receipts given in the plaintiff's name, and directed the jury to find a verdict for the plaintiff.

A verdict having been returned accordingly for 23l., the defendant's counsel applied for leave to move the Court, but the learned judge refused the application.

Prerogative Court.

(Coram Sir H. J. Fust.)

Ward and another, executors, v. Dey.
June 19, 1849.

MARRIAGE LAW OF ST. LUCIA.—WILL.—PROBATE.—ADMINISTRATION.

Where by the law of St. Lucia a marriage was proved by the Chief Justice and the Attorney-General of the island to be valid, it was held to be good and valid elsewhere. And that, therefore, the wife was not empowered to make a will, and probate thereof was refused to the executors, and administration granted to the husband.

SHIRLEY ELIZABETH FRASER, an illegitimate child, of the age of 14, and residing with her mother in Demerara, was induced by one William Dey, a journeyman cooper, to leave her mother and accompany him to St. Lucia, where they obtained a license from the governor and were duly married on the 10th November, 1837, according to the law of the island, by a clergyman of the Protestant Church, and an entry thereof was made in the parish book. The parties lived together as man and wife for several years, but some time before her death on the 18th of June, 1845, a separation had taken place. She had, however, on the 7th June, made a will bequeathing her property from her husband, and appointed Messrs. Ward and Codd her executors. It appeared that, by the law of Demerara, it was necessary, before a marriage with a child illegitimate and under the age of 25 could take place, to obtain the consent of the mother, and that four witnesses should be present at the celebration, or that the banns should be published on three successive feast days. It appeared, however, from the affidavits of the Chief Justice and the Attorney-

General of St. Lucia, that by the law of that island a marriage between persons professing the Protestant religion was valid if performed in pursuance to a license from the governor, in the presence of two witnesses, by a clergyman of the Church of England.

The *Queen's Advocate* and *Dr. Jenner* contended that the marriage was valid, and that, therefore, as a *feme covert*, Mrs. Dey had not the power to make a will, and Mr. Dey was entitled to have administration granted to him.

Drs. Addams and Twiss, for the executors, urged that the marriage was void, citing *Rud-*

ing v. Smith, 2 Cons. 371; and that the will was therefore valid.

The *Court* said that the validity of the marriage according to the law of St. Lucia, was fully proved by the affidavits of the Chief Justice and the Attorney-General of the island, and that as it was good and valid according to the *lex loci*, it was so to all intents and purposes elsewhere. Mrs. Dey, as a *feme covert*, had therefore no power to make a will, and her husband was entitled to her property. The *Court* must, therefore, pronounce for the husband, as prayed, with costs.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Equity.

LAW OF WILLS.

[For the previous Sections of this Series of the Digest in the present Volume, see,—

Privy Council :

Appeals, 85.

House of Lords :

Appeals, 171.

Courts of Bankruptcy, 211.

Courts of Equity :

Law of Costs, 234.]

ANNUITY.

1. *Currency*.—Testator gave an annuity of 100*l.* and other annuities of 100*l.* and 50*l.*, and 50*l.* "sterling," *held*, that the first annuity was 100*l.* "currency."

Held, also, on construction of the will, that the plaintiff was entitled absolutely to such a sum as would produce 100*l.* currency. *Yates v. Maddan*, 38 L. O. 33.

2. *To widow*.—Upon construction of will, *held*, that the widow was only entitled to an annuity left her, and not to the income of the residuary estate. *Wright v. Warren*, 38 L. O. 107.

BEQUEST.

1. *General*.—A bequest of all the property that the testator might die possessed of, *held*, from expressions in a codicil of even date, to pass only a part of the testator's property. *Attorney-General v. Wiltshire*, 16 Sim. 36.

2. *Children and issue taking per capita*.—Bequest of residue, in moieties, in trust for two tenants for life, and at the death of each in trust, as to her moiety, to the children of the two who should be living at the death of the deceased tenant for life, and the issue of such of the children as should then be dead: *Held*, to take effect *per capita*. *Abbey v. Howe*, 1 De G. & S. 470.

See *Lapsed Bequest*.

CHILDREN.

See *Bequest*, 2; *Issue*.

CROWN, CLAIM OF.

Nest of kin.—Testator gave certain sums of money to his daughter for life, with remainder to her children on attaining 21 or marriage; the children attained 21, but died before the daughter: *Held*, that they took vested interests.

And *held*, therefore, that the Crown was entitled to their shares, as their father left no next of kin. *Attorney-General v. Wiltshire*, *Wiltshire v. Harwood*, 38 L. O. 10.

DEVISE OF MORTGAGED ESTATE.

Residuary personal estate.—*Liability to exonerate devised estate*.—A testator gave certain portions of his real and personal estate to trustees for payment of his debts; and he specifically gave several portions of his real and personal estate to different parties, "freed from his debts;" and also bequeathed his residuary personal estate, "freed from his debts." One of the devised estates was subject to a mortgage. The funds primarily applicable being insufficient to discharge all the debts, the property which passed under the residuary clause was *held* to be the next fund which ought to be resorted to for that purpose; and the devisee of the mortgaged estate was declared to be entitled to have the mortgage paid off out of the residuary estate. *Lord Brooke v. Earl of Warwick*, 1 H. & T. 142.

ELDEST SON.

Held, (affirming the decision of the *Court* below,) that, where the testatrix had excluded from the bequest her daughter's eldest son, or such of her sons as by the death of an elder brother might become the eldest son, the death of the eldest son after the testatrix did not affect the bequest, and the second son becoming the eldest before the youngest attained 21, was excluded. *Livesey v. Livesey*, 38 L. O. 31.

EXECUTORS.

See *Interest on Legacy*.

HEIR.

1. *Produce of realty*.—*Lapsed residue of mixed fund*.—A testator devised freehold

estates upon trust to sell, with a declaration that the monies to arise from such sale should be deemed part of his personal estate, and that the income thereof should be considered as part of the income of his personal estate, and be subject to the disposition of his personal estate thereafter named. The testator then gave his personal estate upon trust for four persons, as tenants in common. By a codicil, the testator revoked the residuary gift to one of the four, who was also the testator's heir-at-law and customary heir: *Held*, that the heir was entitled to so much of the lapsed residue as consisted of real estate. *Gordon v. Atkinson*, 1 De G. & S. 478.

Cases cited in the judgment: *Lady Bristol's case*, 2 Vern. 645; 2 P. Wms. 194, n.; *Robinson v. Taylor*, 2 Bro. C. C. 589.

2. *Next of kin*.—Testatrix, by her will, after expressing an intention to dispose of all her real and personal estate as thereafter mentioned, gave certain legacies, and appointed A. and B. her executors, and gave to them and their heirs all lawful powers and authorities to conduct and manage her freehold estates, so as that the same might, at their discretion, be sold and converted into money, and she directed that the net money should form part of her real and personal estate; and for those and every other purpose connected with her property, whether real or personal, she invested A. and B. and the survivor of them and his heirs, executors, and administrators, with her full authority; and she directed that any undisposed of surplus of monies should be paid as she should, by any future writing or will, direct. She did not, however, make any future writing or will. After her death, A. and B. sold her real estates. Her personal estate was sufficient to pay her debts and legacies: *Held*, that her heir, and not her next of kin, was entitled to the monies produced by the sale. *Flinn v. Warren*, 16 Sim. 124.

Cases cited in the judgment: *Amphlett v. Parke*, 2 Russ. & Myl. 221.

INTEREST ON LEGACY.

Executors.—A legacy to an infant was invested by the executors in the 3 per cent. consols, on the infant attaining 21: *Held*, that the executors ought to have paid the legacy into Court in the first instance, under the Legacy Act, and that they were therefore liable to pay the legacy with interest, at 4 per cent., from six months after the death of the testator. *Rimell v. Simpson*, 37 L. O. 177.

ISSUE.

Children.—*Survivors*.—Testator gave all his real and personal property to his wife for life, and at her death, if he left issue, to the child or children he might leave at his decease; but, if he died without leaving issue, then he gave all his property, in equal proportions, to his brothers and sister, Thomas, Anthony, John, and Jane; and if any of them should die without leaving issue, he gave such share or shares

to the survivors or survivor of them; but if leaving issue, he gave such share to their children. The testator died without issue, John died a bachelor in his lifetime, Jane died in the lifetime of his widow, leaving one child and several grandchildren, the issue of a deceased child. Thomas survived the widow, and died leaving children. Then Anthony died a bachelor.

Held, that the share intended for John, belonged, absolutely, to Thomas, Anthony, and Jane; that Jane's share belonged to her child: Thomas's to his children; and Anthony's, to his real and personal representatives. *Benn v. Dixon, Dixon v. Nicholson, Dixon v. Priestley*, 16 Sim. 21.

LAPSED BEQUEST.

Testator, by his will, gave certain property to his son, then in Van Diemen's Land, and deceased before he knew of the previous death of his son: *Held*, in accordance with the decision of *Johnson v. Johnson*, 3 Hare, 157, and *Winter v. Winter*, 5 Hare, 306, that his representatives were entitled, under the 7 W. 4 and 1 Vict. c. 26, s. 33, to the bequest. *Mower v. Orr*, 38 L. O. 133.

LEGACY.

1. Testator ordered and empowered the trustees of his will, at their free will and pleasure, to sell part of the trust property, and, out of the proceeds, to pay not exceeding 2,000*l.* to his son, for setting him up in business, or for such other purposes as the testator's wife should think proper and most beneficial to him. The son survived the testator, and afterwards died without having entered into business, and without the 2,000*l.*, or any part of it, having been raised.

A general demurrer to a bill filed, by his personal representative, to have the 2,000*l.* raised, was overruled. *Gough v. Bult*, 16 Sim. 45.

2. *Trust*.—Testatrix gave 1,000*l.* to her nephew to maintain and bring up her natural son, F. B.; and she directed the interest of one-fourth of her residue to be applied for the maintenance and education of F. B. during his infancy, and the capital to be paid to him on his attaining 21.

Held, that the nephew was not a trustee of the 1,000*l.* for F. B., but was entitled to it for his own benefit. *Biddles v. Biddles*, 16 Sim. 1.

3. *Lunatic*.—*Costs*.—Executors invested a legacy given to an adult imbecile legatee in consols, and accumulated the dividends. On a bill filed for payment of the legacy and interest at 4 per cent., the Court refused to disturb the investment, and under the circumstances of the legatee, ordered the costs to be paid out of the testator's estate. *Pothecary v. Pothecary*, 37 L. O. 336.

See *Interest of Legacy*.

MARRIAGE SETTLEMENT.

Upon construction of a will, *held*, that the plaintiff took an absolute interest in the capital of 60*l.* a-year, bequeathed under a co-

dicil in addition to a former sum given under a marriage settlement. *Lewis v. Burnie*, 38 L. O. 67.

NEXT OF KIN.

See *Crown, claim of*; *Heir*, 2; *Residue*.

PERSONAL ESTATE.

See *Railway Shares*.

POWER.

1. Where a donee with power to appoint, gives various sums by her will, amounting to the whole money, but does not refer to the power, the appointment will not take effect. *Davies v. Thomas*, 37 L. O. 474.

2. *A.*, being entitled to a share of a testator's residuary estate, bequeathed *all the effects due to him from the estate*, to his nine children. The estate was then unadministered; but it was, afterwards, administered, and certain debts due to it were allotted to *A.*, as his share of the residue. After which he settled the debts in trust for himself for life, remainder in trust for his sons and daughters, or any of them, or any of their children, as he, from time to time, by deed or writing, *to be by him duly executed*, or, by his will, should appoint. *Held*, under the combined operation of the 24th and 27th sections of the late Wills' Act, (7 W. 4 and 1 Vict. c. 26,) the will, *though made before the power was created*, was a good execution of it. *Stillman v. Weedon*, 16 Sim. 26.

See *Trustees*.

RAILWAY SHARES.

Personal estate.—Railway shares are included in a gift of monies arising from the residue of personal estate. *Surtees v. Hopkinson*, 37 L. O. 474.

RESIDUE.

Next of kin.—A will, not affected by the 11 G. 4, and 1 W. 4. c. 40, commenced as follows:—"I give, devise, and bequeath all my estate, real and personal, to *W. E.*, his heirs, executors, or administrators, to and for the uses, intents, and purposes following." Then followed certain declarations of trust, but which were applicable only to particular portions of the personal estate, and the will concluded by appointing *W. E.* sole executor: *Held*, (reversing the decision below,) that *W. E.* took the residue as trustee for the next of kin.

Observations on the conflicting opinions of Sir W. Grant and Lord Eldon in *Dawson v. Clark*, 15 Ves. 409, 18 Ves. 247, and the opinion of Lord Eldon confirmed. *Mapp v. Blcock*, 2 Phill. 793.

Cases cited in the judgment: *Bishop of Cloyne v. Young*, 2 Ves. 91; *Paice v. Archbishop of Canterbury*, 14 Ves. 370; *Robinson v. Taylor*, 2 Bro. C. C. 589; *Southouse v. Bate*, 2 Ves. & B. 396.

SEPARATE USE.

Upon construction of a will and codicil, *held*, that the testator's sister was entitled to the fund devised, but not to her separate use. *Chipchase v. Simpson*, 37 L. O. 356.

SURVIVORSHIP, TIME OF.

Residuary bequest to a brother of the testator for life, and after his death to his wife, and at her death to go to such of the testator's relations as survived them: *Held*, to give the whole to the only one of the brothers of the testator who survived the tenants for life, to the exclusion of the children and representatives of brothers of the testator who survived him, but died in the lifetime of the second tenant for life. *Bishop v. Cappel*, 1 De G. & S. 411.

Case cited in the judgment: *Spink v. Lewis*, 3 Bro. C. C. 355.

See *Issue*.

TENANCY IN COMMON.

Bequest of personal estate, upon trust to assign the same to four persons, "and to each of their respective heirs, executors, administrators, and assigns:" *Held*, to create a tenancy in common. *Gordon v. Atkinson*, 1 De G. & S. 478.

THELLUSSON ACT.

Upon construction of a will, *Held*, that the parties were entitled to the income arising from the property, it being personality and having accumulated for 21 years, the period limited by the Thellusson Act. *Ellis v. Maxwell*, 38 L. O. 10.

TRUST.

1. Testator devised freeholds and copyholds to his son for life, and after his decease to his first and other sons, *paying* 10*l.* a year to *M. C.* for life.

Held, that the word "paying" created a charge, and not a trust. *Hodge v. Churchward*, 16 Sim. 71.

2. *Monument*.—*Charity*.—Testator, in the 8th clause of his will, directed his executors to purchase a piece of ground, which he described, and to erect a monument upon it for the interment of his own body and the bodies of his parents and sister, and to pay the expense out of the surplus of his property, after discharging his debts and legacies. By the 9th clause, he gave *the remainder of his property* to a charity. The owner of the piece of land refused to sell it.

Held, that the subject-matter of the 9th clause was not so implicated with the subject-matter of the 8th, as that, the 8th having failed, the 9th must fail also; and that the 8th having failed, the whole surplus of the testator's property passed by the 9th clause. *Milford v. Reynolds*, 16 Sim. 105.

See *Legacy*, 2.

TRUSTEES.

Power to appoint.—A power to appoint a new trustee, on an existing one *becoming incapable* to act, does not apply to the case of a trustee going to reside abroad. *Withington v. Withington*, 16 Sim. 104.

WIDOW.

See *Annuity*, 2.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, AUGUST 4, 1849.

BANKRUPT LAW CONSOLIDATION ACT.

THE Bankrupt Law Consolidation Bill having been subjected to repeated mutation, excision, and interpolation, obtained the Royal Assent on Wednesday last. The precipitancy with which it was hurried through its later stages has been quite as remarkable, and more objectionable, than the tardiness of its progress at an earlier period of the Session. The result, we greatly fear, must be, that, after all the attention and consideration the measure has received, the machinery will be found defective, and the utility of the act marred by imperfections of detail, which, had there been time for a little more deliberation, would have been effectually prevented.

The bill, as our readers will remember, was laid upon the table of the House of Lords during the first week of the Session. It was then referred to a Select Committee, in which it underwent a protracted examination and discussion. The bill, as amended by the Select Committee, was printed on the 19th March, and it must be admitted, that at this stage many dangerous novelties, and some provisions of the most impracticable character, were somehow or another foisted into the bill. However, the Law Societies and the Commercial and Trading Societies bestirred themselves, many of the objectionable provisions were abandoned, and another copy of the bill, as amended by the Select Committee, was ordered to be printed on the 24th May. Subsequently further alterations were made, several new clauses introduced, some of which were supposed to be in substitution of those previously withdrawn, and the bill, as finally amended by the Lords, went down to the Commons on the 8th of June.

As might have been expected in respect

of a measure involving such important alterations in principle and practice, the government declined to ask the House of Commons to adopt the bill, until it had been fully investigated, and it was again referred to a Select Committee of the lower House. In this Committee, which, notwithstanding what has been insinuated, appears to have been constituted in a manner quite unexceptionable, the provisions of the bill underwent a most searching scrutiny. The structure of the measure was totally altered, many of the experimental novelties grafted on it by the Lords' Committee were lopped off, and a different bill in substance and form produced.

The discussions, to which the various clauses were subjected in the Commons' Committee, were protracted to so advanced a period that the bill, as amended, was not reported until the 24th July, and upon that day it was submitted to the House of Commons, with a candid declaration from the Attorney-General, that the House must abandon the exercise of its deliberative functions in respect of it, and pass the bill in the shape in which it was produced, on the faith of the Committee. As an additional guarantee for the correctness of the details, the learned Attorney added, that he had devoted himself exclusively to the subject for some weeks.

Under these circumstances and upon these representations, the measure has become law without time being afforded for the Law Societies, the profession, or the public generally, to become acquainted with its provisions, or to consider the effect and bearing of the various alterations introduced since the bill left the House of Lords. Sensible that the act contains much that is good—much that is deserving of unqualified approval—and must be considered as a decided improvement on the previously exist-

ing law, we are amongst those who think it would have been safer and wiser to have allowed the whole subject to stand over until next Session, when the amendments introduced by the House of Commons would have been adapted to that portion of the original bill which it has been thought judicious to retain, and their effect considered by practical men. It is now inevitable that the act "to amend" will create the necessity for further amendments, and that much more remains to be done before this branch of the law can be considered perfect or settled in such a form as to afford satisfaction to the commercial community.

The discussion in the House of Lords on the bill after it was sent back from the Commons, was distinguished by a very remarkable speech from Lord Brougham, containing what affords some intrinsic evidence of being a prepared attack upon a learned judge who is stated to have given evidence before the Commons' Committee. As Vice-Chancellor Knight Bruce is the only person holding a judicial station who was examined by the Committee, the Ex-Chancellor's observations are supposed to have been directed against him, and to have been mainly caused by a letter addressed by the Vice-Chancellor to one of the members of the committee, which was circulated amongst the members, and which we hope to find an early opportunity of submitting to our readers.

The new act itself has reached us at too late a period to enable us to give an abstract of its provisions in the present number, or even to notice the amendments introduced subsequently to those noticed in our last, (page 248). They consist, however, of alterations which cannot be said materially to affect the scope or spirit of the measure, which, as a whole, we are apprehensive will be found to work in such a manner as to produce disappointment. It is impossible, however, to deny that it contains a "large instalment" of what was required, and it is therefore to be hoped it will obtain a fair trial.

In addition to the statement at page 248, of the scope of the amendments, it may be mentioned that the office of Secretary of Bankrupts is retained, but the business is to be removed to Basinghall Street, and the adjudication is to be made on a petition to the Court of Bankruptcy without the Lord Chancellor's previous authority,—giving, in fact, the Bankruptcy Court an original

jurisdiction, but with an appeal to one of the Vice-Chancellors, who may direct a trial by a jury. Appeals may also, in certain cases, be made to the Lord Chancellor, and, under his direction, a final appeal to the House of Lords.

Power is given to the Commissioners to make Rules and Orders, subject to the Lord Chancellor's approval.

The Fees of Office are to be paid by stamps on the proceedings.

The following explanation as to the clauses which have been struck out of the Lords' Bill by the Select Committee of the Commons, is taken from the speech of Mr. *Mullings*, a member of the Committee, and who, until recently, practised as a solicitor. Referring to the report of Lord Brougham's speech, he said—

"The noble and learned Lord had been represented to have complained, that the bill contained 367 clauses when sent down to the house, and that it came back with only 278 clauses—no less than 89 clauses having been struck out. But it was right the public should know that the clauses struck out had reference to *salaries*, and he would add *increased salaries* in some cases, and to *retiring allowances and pensions*, and other matters that the Committee thought ought not to be included in the bill.

"There were only two matters of importance, with regard to which, clauses had been struck out. These were the '*secret transfer*' clauses and the '*execution*' clauses. He considered that the secret transfer clauses, if they had passed into a law, would have been a greater blow to credit than had ever before been inflicted. (Hear, hear.) The 106th clause provided, that every secret transfer should be in itself an act of bankruptcy, while the 107th clause provided that all transfers and dealings with property by the bankrupt for two months prior to his bankruptcy, should be deemed a secret transfer and an act of bankruptcy. He had himself put the question to the noble and learned Lord,—'Suppose a bankrupt had property mortgaged for 2,000*l.*, and that he should pay off that mortgage, and redeem the property for the benefit of his assignees, would not the effect of these clauses be, that the unfortunate mortgagee would be liable to have his money taken from him?' And the answer of the noble Lord was, 'Upon my word, I believe that would be the effect of them.'

"Another clause known as the *clergyman's* clause, had been introduced from the Insolvent Debtors' Act by a blunder. With regard to the execution clauses, he had an interview with the noble Lord the night before the bill passed, and the noble Lord then gave his most unqualified assent to these clauses being struck out."

AMENDED SMALL DEBTS' ACT.

WE recently stated, (p. 219, *ante*.) the purport of the principal alterations in this bill:—the rejection of the two proposals, 1st, to extend the jurisdiction to 50*l.*, and 2ndly, to compel the plaintiffs, wherever residing, to resort to the defendant's district Court. But the objections to the existing act remain unamended. There is still *no appeal*, and no due allowance of costs. These are lamentable omissions. The ancient privilege of attorneys to sue in their own Courts is now taken away, but the proposed equity jurisdiction has not been conferred.

We shall very speedily place the act before our readers.

A return to the House of Commons from each County Court has just been printed, stating the number of plaints entered, causes tried, sittings of Court, and monies received and paid, &c., in the year 1848. Some remarkable results are shown by these County Court statistics. For the present we may state, that about one-half of the plaints are for sums under 1*l.*; another quarter under 2*l.*; an eighth under 5*l.*; a sixteenth under 10*l.*; and the remaining sixteenth under 20*l.* Thus, seven-eighths were recoverable, at a small expense, in the old Courts of Request up to 5*l.*, and the present vast and expensive machinery for the benefit of "barristers of seven years' standing" has been erected principally to adjudicate upon an eighth at most, or a sixteenth part of this branch of petty litigation, for many of the old Courts of Request extended to 10*l.*

We shall have much to say hereafter on the operation and effect of this act, now in its third year, as well in regard to public as professional interests.

NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

[The Statutes of this Session printed in the last and the present Volumes, are as follow:—

- Buckingham Assizes, vol. 37, p. 408.
- Inclosure of Commons, vol. 37, p. 408.
- Appointment of Overseers of Poor, vol. 37, p. 448.
- Law of Larceny Amendment, vol. 37, p. 471.
- Annual Indemnity, vol. 37, p. 489.
- Petty Sessions in Counties and Boroughs, p. 78, *ante*.
- Maintenance of Poor out of Workhouses, p. 101, *ante*.
- Costs of Distraining for Highway Rates, p. 127, *ante*.

Defective Powers of Leasing, p. 187.
 Sheriff of Westmoreland, p. 220, *ante*.
 Passengers' Regulation, p. 239.]

RELIEF OF POOR IN CITIES AND BOROUGHES.

12 & 13 VICT. c. 64.

An Act to remove Doubts as to the Authority of Justices of the Peace to act in certain Matters relating to the Poor in Cities and Boroughs. [28th July, 1849.]

1. *Justices of the peace in cities and boroughs may act in all matters relating to the relief of the poor under the 43 Eliz. in such cities and boroughs.*—By the 43rd Elizabeth, authority is given to justices of the peace for counties to act in certain matters relating to the poor, and doubts have been entertained whether the same powers extend to justices of the peace having jurisdiction within cities and boroughs, and it is expedient that such doubts should be removed: It is therefore enacted, That, notwithstanding anything in the said act contained, all powers and authorities which by the said act may be exercised out of General or Quarter Sessions, by two or more justices of any county, may be exercised within any city or borough by any two or more justices of the peace having jurisdiction within such city or borough respectively, as fully in all respects as by the justices of the county in or for any parish of such county.

2. *Acts of the justices in any city or borough confirmed.*—That nothing heretofore done in any city or borough for the purposes of the said act by any two or more justices having jurisdiction in such city or borough shall be deemed or taken to have been illegally or insufficiently done by reason only that neither of the said last-mentioned justices was mayor, bailiff, or head officer of any such city or borough, but everything so done by such two or more justices, if otherwise lawful, shall be deemed to be and to have been valid to all intents and purposes.

NOTICES OF NEW BOOKS.

The Law relating to Officers in the Army.

By HARRIS PRENDERGAST, Esq., Barrister-at-Law. London: Parker, Furnivall, and Parker, 1849. Pp. 239.

ALTHOUGH it might, at first sight, be supposed that officers in the army would have little occasion for a treatise from the hand of a civilian on the laws by which they are affected, it is, from recent circumstances, very manifest that a work devoted to the military profession was much needed, and we are glad to say that the want has been supplied by Mr. Prendergast with great learning and ability. The following extract will not only show the design of the author in the

publication of his work, but the advantages he possessed in preparing it for the press :—

"The work was suggested" (he says) "by my brother, Lieutenant William Grant Prendergast, of the 8th Bengal Cavalry, Persian Interpreter on the Staff of Lord Gough, Commander-in-Chief in India; and from the same quarter much valuable assistance was originally derived, both as to the selection of topics, and the mode of treating them. Without the help of such military guidance, a mere civilian would have laboured under great disadvantages; and the merit, if any, of the Work, is therefore attributable to my coadjutor alone. For the composition, however, I am alone responsible.

"Officers in the army are liable to a variety of special laws and legal principles, which deeply affect their professional and private rights; and it is hoped that a Work, which endeavours to develop these subjects is a connected and untechnical form, will not be deemed a superfluous contribution to military literature.

"With this view, the following pages are by no means so much addressed to lawyers, as to a class of readers whose opportunities of access to legal publications are necessarily very limited; and care has been taken, in all cases of importance, to set forth the exact words and expressions employed by the learned Judge in propounding the law, and, on other occasions, to give quotations at length from books of authority.

"It is conceived that no apology can be necessary for this humble attempt to define the civil rights, duties, and liabilities of an honourable profession. 'It has been,' says Mr. Justice Blackstone, 'the peculiar lot of the English system of laws to be neglected and unknown, by all but one practical profession.' * * * * 'I think,' says the same eminent writer, 'that a competent knowledge of the laws of that society in which we live, is the proper accomplishment of every gentleman and scholar—a highly useful, I had almost said essential, part of liberal and polite education.'

"No rank, no elevation in life, and let me add,' says Mr. Justice Foster, 'no conduct, how circumspect soever, ought to tempt a reasonable man to conclude that these inquiries do not, nor possibly can, concern him. A moment's cool reflection on the utter instability of human affairs, and the numberless unforeseen events which a day may bring forth, will be sufficient to guard any man, conscious of his own infirmities, against a delusion of this kind.'"

The following is a statement of the contents of each chapter of the book :—

"1. On the legal constitution of the army.

2. On admission to the service.

3. Home and foreign enlistment.

4. Rank.

5. Sale and purchase of commissions.

6. Pay—half-pay—pensions.

7. Prize and booty.

8. Liability for private injuries.
9. Criminal liabilities.
10. Liability on contracts.
11. Privileges and disabilities.
12. Discharge from the service."

Our readers will recollect that we have twice lately called their attention to the remarkable trial at Guernsey, of Captain George Douglas,* and to the disregard of the ordinary rules of evidence by the admission of improper, and the rejection of proper, testimony. In the present work, (p. 187,) Mr. Prendergast observes that "Courts Martial cannot depart from the rules of evidence observed in the Courts of Common Law; and therefore the sentence of such a Court, if founded upon the improper reception or exclusion of evidence, may be set aside by the Courts at Westminster."

"An instance of this occurred in the case of the mutineers of H. M. S. *Bounty*, which was sent by King Geo. III. on an expedition, under the command of Captain Bligh, for the purpose of transplanting the bread-fruit and other valuable plants from the islands in the South Seas to the British colonies in the West Indies. A great part of the crew mutinied during the voyage, and took possession of the vessel; but some of the mutineers were afterwards captured and brought to England, where they were tried by a court-martial at Portsmouth. There being no evidence against one of the prisoners, it was insisted by another prisoner that he had a right to examine the first on his behalf; but the court-martial, under the advice of the judge-advocate, refused to permit the examination on the ground of its being contrary to the practice of courts-martial, and the prisoner was condemned to death. Upon the report, however, of the sentence to the King, the execution was respite till the opinion of the judges was taken; and they being all of opinion that the sentence was illegal on the ground of the rejection of legal evidence, the prisoner was ordered to be discharged."

"A later instance of the same nature occurred before a court-martial in Ireland, in the case of Mr. Stratford, where the sentence was set aside, on account of some irregularity in the trial against the rules of the common law. In the case, also, of Lieutenant Frye of the marines, one of the grounds of action was, the admission of improper evidence."

In the former of these cases, the life of the accused was at stake; and in that of Captain Douglas, a punishment not less severe to a man of honour has been, or is about to be, carried into effect. We know not what measures are, or will be adopted

* See pp. 122, 181.

† 1 East's Reports, pp. 312, 313.

• See Mr. Prendergast's work, p. 113.

by the legal advisers of Captain Douglas, but there cannot be a doubt that he has suffered a grievous wrong from the absence of a fair and legal trial, and upon the above authority the sentence ought to be set aside.

There is a very full and able article on the case of Captain Douglas in the number just published of the *Law Review*, and a very powerful one in the *Law Magazine*.

PROFESSIONAL REMUNERATION.

THE important subject of the remuneration allowed for professional skill and labour, and the mode of ascertaining and computing the amount, has often been discussed in this Journal. It has now been taken up by the *Law Review*, the new number of which contains a very able article, bearing, as well on the state and interests of the profession generally, as on its emoluments in particular.

This discussion seems now to be well-timed, for both classes of practitioners are dissatisfied with the present state of things. We hear that some leading members of the Bar decline to accept briefs, unless accompanied with a certain amount of fee, much larger than heretofore; and where retainers have been given for the Circuit, but the cause withdrawn before trial, brief fees are required as due immediately on the entry of the cause.

It is remarkable, also, that the *Law Times* recently contended, in opposition to the Special Pleaders who take smaller fees than barristers, that either the practice of the Special Pleaders should be altered, or that the Bar should be at liberty to take smaller fees on pleadings, &c.

These and many other recent circumstances clearly indicate that the changes which have taken place in the business of the Superior Courts, consequent upon the extension of the County Courts and other law reforms, are now pressing upon the members of the Bar.

The pressure, however, is still greater upon the attorneys, whose large outlay for fees of Court, and counsel, fees of office, payments to witnesses, and for stamps, besides clerks' salaries, (the clerks of counsel being paid with their masters' fees,) and various office expenses, require the possession of a considerable amount of capital.

The legislature should really consider these things, for if they do not,—if no relief be afforded to the larger branch of the profession,—if their peculiar taxes are con-

tinued and their emoluments diminished,—and they continue still deprived of offices of honour, and emolument,—the respectable class will be gradually diminished, and an inferior order of persons take their place, to the manifest injury of the public.

Now, to whom, for the redress of these grievances, can the Attorneys look, if not to the Lord Chancellor—to the other Law Lords in the Upper House, and to the forty or fifty members of the Bar in the House of Commons? Yet it is notorious, on the last important occasion when the interests of the profession at large were involved in a measure before the House,—that of the Small Debts' Act,—not a word was said in favour of the attorneys whose practice would thereby necessarily be largely diminished, and who were excluded from the possibility of holding those minor judgeships which, under the former acts on that subject, they possessed. These are indeed "heavy blows and great discouragements" to those who on other occasions are admitted to be of the first importance in the due administration of justice, as well in the Superior Courts, as in the conduct and arrangement of the affairs of families and the community in general.

We shall continue to urge these topics in behalf of our brethren, however unpalatable they may be in the quarters complained of; but with truth and justice and the interest of the public on our side, we trust at last to effect a remedy. We invite, especially during the present vacation, the suggestions of our readers towards the objects in view, and which by a union of exertion cannot fail to be accomplished.

STATUS OF ATTORNEYS.

OUR correspondents still proceed with their statements regarding the causes of the alleged degradation of attorneys and solicitors. Our opinion is, that the extent of the public disesteem is much overstated. We believe that attorneys, as a class, are respected to the full as much as they ever were. Indeed, we incline to think they are more esteemed than formerly, and, as the best test of the fact, we refer to the language of the public press. Formerly it was a popular topic to abuse the attorneys;—they are now rarely attacked, because such attacks would not be favourably received; and, notwithstanding the too frequent instances of misconduct, the great bulk of the profession is eminently distinguished for its integrity and intelligence.

The truth we believe to be, that, whilst the attorneys and solicitors have made considerable progress in their *social* condition, they have lost ground in their *legal* station. Whilst they have won the cordial esteem of society for their intelligence, their public usefulness, and gentlemanly bearing; and whilst, at their own expense, they have formed institutions for professional improvement, for facilitating the acquisition of legal knowledge and providing better means for legal education, and for an effectual supervision over all cases of malpractice, which cannot fail gradually to increase the public value and general respectability of the body;—they have sustained the most serious injury from the apathy or hostility of the ambitious members of the Bar who have found seats in parliament, and are (with a few honourable exceptions) seeking by political means to advance themselves, without regard to the true interests of the profession at large. The degradation which is complained of has been inflicted by the influential members of their own profession, and which is now falling upon a large part of the Bar itself, as well as upon the attorneys. It is clearly the duty, as well as the interest, of all who exercise authority in the law to promote the learning and respectability of the general practitioner, because on his integrity and skill depends almost entirely the due administration of justice, so essential to the welfare of the community.

It will be observed that the writer of the following letter sets forth four causes to account for the supposed degradation of the profession of attorneys and solicitors:—1. Want of capital, or poverty. 2. The unreasonableness of their bills of costs. 3. The large amount of fees paid to counsel. 4. The quibbles of the law.

"1. I regret to say, that numerous reasons abound for the deplorable state of degradation into which the profession is now and has for years been plunged. No doubt want of education, good breeding, and address have a good deal to do with the cause and effect, but the *want of capital* has quite as much to do with the status of the profession as anything else; a poor attorney is, I verily believe, the poorest man on earth; to what shifts, quirks, and quibbles will he not resort to maintain his position! is he not exposed to a thousand temptations which a rich man not only never feels inclined to lean to, but shuns with horror the mere idea of approaching? The rich attorney picks and chooses his own business and his own clients; and have we not memorable instances of gentlemen at the Bar, who at the onset of their career were famous for their adoption of

certain unmentionable courses, and have we not seen Old Bailey practitioners, after feathering their nests, quit the purlieus of that dark-visaged tribunal, and become ornaments of the Westminster bar and benches too? I have in my eye at the present moment men, (excuse me, gentlemen,) who were at one time of day notoriously bad attorneys,—bad, I believe, only because they were poor—became not only rich but respectable also, eschewing their evil deeds, and putting on the armour of truth and honesty.

"2. There is another and yet more solemn reason for the fall of the attorney, than has yet been touched upon, and which deserves the serious and reflective attention of all who wish to raise the attorney's status,—it is his *bill of costs*—it is the bill of costs which damns the attorney and smites him with derision—it is the bill of costs which no man save the attorney himself can comprehend the meaning of—it is the bill of costs which plunges the unhappy and too confiding client into irretrievable ruin, and consigns his family and all his dependents to the chilling mercies of the workhouse test—it is the bill of costs which does no man, save the attorney, any good. All that the client knows about the matter is, that he has been to law, and has to pay a bill of costs; but as for understanding the meaning of the different items in the bill, their utility or necessity, it is nearly all Greek to him; the sum total of his knowledge of its contents is the sum total thereof. In most cases there must be one loser, and it often happens that both have to pay, and then the matter becomes doubly preplexing and inexplicable to unprofessionals. In the latter case both attorneys claim the palm of victory, but some how or other both the clients have to pay; and that's what neither can be made to understand, and both are dissatisfied, and both denounce the attorney. But how is the difficulty touching this said bill of costs to be obviated: that's a ticklish matter I confess; but the only honest way to deal with it, is to reform it, make it intelligible, make it reasonable, and square it to the exigencies of the party who has to pay it,—that's fair, is it not, Mr. Editor? Why should there be one inflexible rule for law charges? Why should a solicitor be obliged to charge a man in needy circumstances as much for drawing a deed when he can only charge a rich duke at the same rate, and yet if he lowers the charge to the former, the profession pronounces shame upon the attorney who has the temerity to charge less than the established scale under any circumstances? The advocates of the uniformity system say, there must be one inflexible standard, but I deny its necessity and its policy too; some of the more amiable class, feeling that in some particular transaction they cannot make the usual charge, forego it altogether, or they cut down the instrument, or resort to some other expedient, but they never abate the charge itself.

"3. Another source of just complaint and condemnation is the enormous amount of *fees paid to counsel*; it is become the fashion to pay them something akin to Italian singers and

performers. I admit that superior talent at the bar or any where else should be fairly and liberally remunerated, and the public think so too, and don't object to what's reasonable; but they do and will resist unconscionable demands. Again, the public complain, and I think with good reason too, of the excessive number of counsel frequently engaged in one cause. Now, the number and amount of fees may to a certain extent be regulated by the attorneys, if they were disposed and agreed to do so.

"4. One more remark and I will conclude this dismal subject. The community at large, that is, the reading portion of it, peruse the public newspapers, but they never read law books. Now, I am sure that I am not overstating the fact when I say that the unprofessional reader is surprised and nauseated with the many and varied decisions pronounced in our Courts of Law:—a case is argued, and which upon the face of it nothing but justice as clear as the sun at noon day appears; the plaintiff (it may be) proves his case (that is the justice of it) to the entire satisfaction of the judge, jury, and a large auditory; nevertheless, the judge feels and expresses himself reluctantly obliged to tell the jury that, notwithstanding the facts are undeniable, yet still that by reason of some "rule of law," (a mild expression popularly termed a *quibble*.) they must find a verdict for the defendant. Now, is not such a state of things intolerable? is not common sense outraged? can it reasonably be expected that the law or its officers will be respected under such circumstances? But how comes it that the Law of England, which is the boast and pride of certain of our countrymen, is in this wretched plight? One reason is to be found, that law, as a science, has become so artificial, that you might poise a million arguments upon the point of a needle, and so gossamer-like are the distinctions that it requires the aid of a "Ross" microscope to discover the lines of demarcation; and whilst the law is suffered to remain in this transparent state, so long it will continue a disgrace to a civilized and intellectual community, and a source of bitter sarcasm and well-merited censure, and its professors denounced in intolerable plagues. I only regret that I am one of them. "T. W. H."

We have numbered the paragraphs of our correspondent's letter; and in order that our readers may more distinctly consider the argument, and that the several propositions contended for may be viewed collectively, we subjoin those of our former correspondents.

5. E. G., (p. 247, *ante*.) contends that the disrepute of attorneys is owing to their *sharp practice* in Common Law proceedings, as contrasted with the more liberal and gentlemanly practice of solicitors in the Courts of Equity. This is evidently a distinct ground from that taken by T. W. H., because "sharp practice" is the voluntary

act of the attorney, whilst the "strict rules of law," or "legal quibbles," are chargeable to the Legislature and the Courts.

6. The point urged by W. H. (p. 247, *ante*.) bears upon the small amount of the *premium of articulated clerks*, and may be placed in the same category as that of our present correspondent, who holds that the "want of capital" is at the root of the evil. "A Solicitor of One Year's Standing," (p. 226, *ante*.) holds the same doctrine; and so does A. U. at page 225.

7. Our correspondent A. U. takes high ground, holding that the best lawyers *discourage litigation*—that an attorney should think of his client first, the opponent second, and himself last. This remedy would indeed elevate the profession and render its members the benefactors of mankind, but we believe they would receive no thanks for their disinterestedness. The evil lies deep in the folly and wickedness of the people themselves.

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The following is from a new contributor, and we trust his testimony will soothe the feelings of some of our correspondents.

"SIR,—I have read the letters which have appeared in your journal on the 'Status of Attorneys,' and your remarks on them. I cannot but think that 'An Attorney' is more obnoxious to blame on account of the personalities which have been indulged in, than 'A Z.' or a 'Paid Articled Clerk.' The animus which inspires 'An Attorney' appears to me not sufficiently liberal. He relies too much on 'good circumstances,' and is too ready to believe that if a person is not in good circumstances, he must be a 'scamp.' It is true that the '*res angusta domi*' is a tempter, and, *ceteris paribus*, one whose pecuniary means are not small is more likely to be honourable in his professional dealings than one whose pecuniary means are small. But these Paid Articled Clerks who reach higher ground are few—they are not 'promiscuously' chosen—they are picked men—they have proved their professional usefulness—they have been for some time attentive to business and respectable in their personal conduct, and therefore the 'liberal-minded attorney' promotes them to a higher grade; and, if you look for the *greatest* scamps in the profession, you will scarcely find paid articled clerks—that is, those who have been paid articled clerks—amongst them.

"I, who write thus briefly in defence of 'Paid Articled Clerks,' am an attorney of some years' standing, have been liberally educated, never have been a paid articled clerk, and am not likely to entertain an unreasonable prejudice in their favour.

"ONE, &c."

LAW AMENDMENT SOCIETY.

REPORT OF THE SPECIAL COMMITTEE ON
THE MODE OF PUBLICATION OF LAW
WORKS.

YOUR Committee, on entering on the investigation of the second branch of the subject referred to them—the mode of publication of law works,—have considered it advisable to direct the attention of the Society to the various modes in which law books are now usually published in this country, and to point out the alterations in the system which appear to them the most likely to afford encouragement to the production of works of permanent value, and generally to promote the pursuit of this department of literature.

They think it is of the utmost importance that the channels for legal information should be kept open and free, and that the least embarrassment possible that the nature of the case allows should exist in the publication of all works connected with the science of the law. There should always be a trustworthy hand ready to receive these publications, and an account of their proceeds should be rendered accurately and speedily.

The alternative which has usually presented itself to the author of a new legal work, in order to get it printed and published, is either to take the risk on himself or to sell his copyright to an established publisher, whose connections and facilities for advertising and publishing his works afford a greater probability of each work entrusted to him being brought into circulation. Of late years, a middle course, also, has been much adopted by the publishers towards a new author, viz., to arrange for the publisher taking the whole risk, and dividing the net balance of profits, after deducting his charges and expenses.

The profits of a work, however, which fall to an author who does not absolutely sell his copyright to a publisher, are not the clear produce of his book after payment of its expenses of printing, advertising, &c. &c., but the amount only of that portion of the price of each copy which is not, by the usage of the book trade, appropriated amongst the booksellers and publishers. In no case is as much as two-thirds credited to the account of printing and authorship. Without entering into minute details, it may be stated that more than a third is apportioned in the shape of allowances, &c. to the book trade, and the expenses of publication. It is hardly necessary to add that if a work is published on the terms of "*half profits*," the author's share must at least be reduced in proportion.

Your Committee do not deem it necessary to enter into a history of this scale of allowances which the usages of the book trade thus establish in the case of ordinary publications. Whether these allowances originally attached only on copies remaining in a publisher's hands after (as was formerly the common practice) the work had been formally subscribed for, or

whether they were permitted by way of compensation for the heavy expenses booksellers formerly incurred by way of carriage, &c., or some risk which they do not now incur, does not distinctly appear, but certain it is that these deductions, together with the anxiety and annoyance attending the superintendence of publications, and the unprotected state in which an author is left as regards his accounts, have at present the effect of offering considerable discouragement to authors in any case becoming their own publishers.

In the case of works of a popular character, the circulation of which is likely to be extensive, and in the sale of which the services of many booksellers may in all probability be engaged, the allowance of so large a portion of the price of books to the trade, and the effect of the system in confining the business of publishing entirely to booksellers, may perhaps not be productive of any great practical inconvenience. The great publishers in catering for the public taste often incur very serious losses, and seem therefore justly entitled to commensurate gains; but in the instance of publications of a purely professional character, the uniform operation of the present publishing system is much more directly injurious.

The members of the legal profession, for instance, constitute a class who, more peculiarly than any other, require a supply of new works of reference. The class includes exclusively amongst their members the authors and readers—the producers and consumers. The practice might not be quite convenient for the author of a new work of this kind to become his own bookseller, although from the imprint in a law book of great value,* such a practice seems not to have been deemed unworthy of a member of the English Bar, and a man of honourable feelings; but it has appeared to your Committee an inconvenience of a serious nature that in such a profession a volume produced by one member cannot pass into the hands of another without a trade allowance, &c. attaching of frequently more than 35l. per cent. on its actual price; and your Committee far more deplore the consequences to this branch of literature of a system which, by preventing authors, except at very heavy risk, and frequently much trouble and uncertainty, becoming their own publishers, leave the selection of subjects and authors to booksellers.

In making these observations, your Committee have no wish to impute any improper mo-

* "A General Abridgment of Law and Equity, alphabetically digested under proper Titles. With Notes and References to the whole. By Charles Viner, Esq. Aldershot in Hampshire, near Farnham, in Surrey. Printed for the author, by Agreement with the Law Patentees, and are to be sold by George Stahan, in Cornhill, or may be had of the Author at his Chambers, No. 3, in the King's Bench Walk, Inner Temple; or, in his Absence, of William Reason, bookbinder, in Flower-de-Luce Court, in Fleet Street. London, 1746."

tives or untradesman-like conduct to the class of booksellers who usually undertake the publication of law books. They only desire to pursue the inquiry they have been requested to make with a view to see if any better mode of publication can be established for the benefit of legal literature, the profession, and the public. The most effectual reformers of any abuse or inconvenience that now exist, either in the present system of law reporting or of other legal publications, would be the law booksellers themselves; and if your Committee had any idea that they would themselves undertake the task, your Committee would gladly resign it into their hands, as at once the best and easiest mode of effecting the proper amendments.

But giving this all due consideration, they pursue the present inquiry. At this time any legal subject would readily find a bookmaker if it offered sufficient prospect of an immediate return to remunerate the bookseller; and no treatise, however intrinsically valuable for the learning, research, style, or arrangement of its contents, would find a publisher to risk the expenses of publication upon it, unless this immediate return appeared very probable; and hence it comes to pass that whilst the speedy publication of a new statute, a set of rules of Court, with notes written at the moment, a new version of an old book of practice, or an index of cases, creates an eager rivalry amongst the publishers, productions of a scientific or elaborate character rarely appear.

Your Committee have great reason to believe that it is to the prevailing mode of publishing, and the discouragement it presents to the production of works on the science and principles of jurisprudence, that these circumstances are to be attributed. There are not wanting in the profession of the law at the present day men as industrious, zealous, learned, and, in other respects, as competent to the task of writing well, as at any former period, if the same proper encouragement were afforded.

The bookseller is, however, now the only caterer for the profession; and the more ephemeral the publications he deals in, the less they cost him, and the more speedy and frequent will be his gains. It is scarcely to be expected, at the present day, that law booksellers should venture their money in the publication of works which it would require an accomplished jurist properly to appreciate; but it does not follow, because the bookseller will not undertake such works, that members of the profession are to be practically precluded from doing so.

The task of publishing valuable works not calculated for popular sale has in various instances been undertaken by societies. Works on divinity, various departments of science, antiquities, &c., have been undertaken by the Parker, Linnean, Camden, and other similar societies; and it appears to your Committee that the honorary exertions of a voluntary society might, in the legal profession, effect a great deal more than is done by any of the societies alluded to—*for*, by merely insuring proper protection to authors, they would en-

courage the publication of many legal works of a high class, which, under the present system, are seldom published.

Under the auspices of a Society of this nature, also, the publication of many works of great practical use to the profession might be reasonably anticipated and brought about. Those members of the profession who had both the leisure, the will, and the power to assist, might thus easily be brought into terms of friendly co-operation, and the results of this combination might develop themselves in the production of a law dictionary or cyclopædia, or perhaps a new abridgment of the law. This work seems rendered necessary by the great changes in the law made in the present century, and its price, under such an arrangement, might be such as to render it from its circulation highly remunerative to the authors of the articles, but within the reach of every member of the legal profession.

A Society composed even of a moderate number of gentlemen of the legal profession, whether or not they were authors themselves, contributing a small annual subscription, would be fully equal to effect a change in the mode at present adopted in the publication of Law Works and Law Reports. They would at all events secure one great point in favour of the production of works of intrinsic value, for by obtaining for the author what he cannot under the present system obtain, an equal chance of circulation for a work published at his own risk, and thus providing an adequate remuneration for himself, the avocation of bookmaking and the trade of bookselling might be made secondary and subservient to the art of good authorship.

The proposed Society might, by undertaking the task of properly advertising, publishing, and superintending, by competent agents, the sale of works printed by authors at their own risk, ensure to the author—what the present system of publication unfortunately does not—a fair share of what the public actually pay for his work; and such a society would most unquestionably succeed in giving satisfaction on one material point where complaints on the part of authors are now very general; for by a systematic attention to the subject of accounts, the author would always be enabled to ascertain how his work stood, and to learn a number of other particulars in respect of which the author is now too often left in the dark. Indeed, there seems no reason why in this respect the accounts respecting a book might not stand as subject to inspection, and as capable of being rendered and checked at regular intervals, as an account with a banker.

A Society, indeed, of this description would be self-supporting. A small per centage on sales of books published by means of the Society would easily suffice to defray the whole expenses of a competent establishment. The existing allowances, &c. might be suffered to continue with respect to works purchased of the Society's agent by booksellers; but copies sold to other persons would be credited to the

author at the price actually obtained for them, reasonable allowances being made to all parties purchasing directly of the agent; a still greater allowance being given to members on works subscribed for before publication, and generally, to members of the Society. It is obvious that no member of the Society, as such, should derive any benefit from the Society, except as an author, and as a purchaser of the books published by the Society. The profits made by the Society, after defraying the expense of the establishment, should go to the author of the particular work which brought them.

Whilst your Committee have been thus induced to give their approbation to the idea of the formation in the profession of a private association, which might not only afford adequate protection to legal authors in publishing their own works, but might, if thought advisable, undertake the publication of Law Reports on the plan proposed on their first Report, they do not recommend that the Law Amendment Society should afford to the association anything more than their sanction and approbation, leaving the success or failure of the plan to depend entirely on its voluntary contributors and supporters.

NOTES OF THE WEEK.

CLOSE OF THE SESSION.

The Parliament was prorogued by Commission on Wednesday the 1st instant. There is no passage in her Majesty's speech referring to the alterations which have been made in the law.

COUNTY COURT JUDGE.

We are informed that Mr. Serjeant *Herbert Jones* has been appointed Judge of the Clerkenwell County Court, in lieu of the late Mr. Starkie, for whom he sat as deputy on the occasions of his unavoidable absence.

ORDER IN COUNCIL REGULATING CLERKS' SALARIES IN THE COUNTY COURTS.

AN order in Council, dated Osborne, July 30, 1849, has been promulgated, whereby it is ordered, that in pursuance of an act passed in the 10th year of her Majesty's reign, entitled "An Act for the more easy recovery of Small Debts and Demands in England," that from and after the 1st of October next, the person or persons holding the office of Clerk in the respective Courts therein mentioned, shall be paid by salaries instead of fees, and that the sum of 500*l.* per annum shall be the sum attached to the office of clerk of each of the following Courts, viz.:—Westminster, Clerkenwell, Bloomsbury, Shoreditch, Marylebone, Whitechapel, Southwark, Lambeth; the County Court of Lancashire, held at Liverpool and Manchester; the County Court of Yorkshire, held at Sheffield, at Bradford, and at Kingston-on-Hull; the County Court of Warwickshire, at Birmingham, and the County Court of Gloucestershire, at Bristol.

RECENT DECISIONS IN THE SUPERIOR COURTS

AND SHORT NOTES OF CASES.

Rolls Court.

Minns and others v. Stant and others. July 19, 1849.

AMENDING BILL.—WANT OF PARTIES.

Leave granted to amend bill by adding parties. Costs to be costs in the cause.

THIS bill was filed by Robert Minns and six other parties against the defendants Joseph Stant, John Hawley, and four others, and sought a declaration that the defendant Stant was assignee, and not purchaser, of a mortgage under a power of sale. The bill also prayed that he might be declared a trustee of the balance of a sum of 1,150*l.*, paid to him by a railway company for the purchase of the premises, after paying the principal money, interest, and costs due on the mortgage, for the benefit of the trustees of a chapel belonging to the Calvinistic Baptists; and that the defendant Hawley might be declared co-trustee of such balance. The defendants having excepted to the bill for want of parties,

Giffard in support of the exceptions; *Turner and Campbell* contra.

The Master of the Rolls held, that all the

parties interested should be made parties to the suit, otherwise the defendants might be liable to another suit. His lordship therefore allowed the exceptions, but gave leave to amend; the costs to be costs in the cause.

July 25, 26.—*Rodick v. Gandell*—*Cur. ad. vult.*

—27.—*Jewson v. Hart*—Petition to carry into effect the trusts of a deed of separation dismissed without costs.

—27, 28.—*Hardey v. Green*—Petition granted to carry into execution certain articles of agreement in contemplation of marriage.

—30.—*Harrison v. Grimwood and others*—*Cur. ad. vult.*

—30.—*Allen v. London and North Western Railway Company*—Order by consent.

—30, 31.—*Christy v. Courtenay*—*Cur. ad. vult.*

Vice-Chancellor of England.

Smith v. Pincombe. April 18, 19, May 5, 1849.

COMPROMISE.—SETTING ASIDE.—COSTS.

Where a compromise had been effected by

young lady of the age of 19 and a half, in the belief that there were no other wills than the one produced, which was informal, whereby she agreed, in consideration of an annuity of 25*l.*, to release her right to and convey the estate to the trustees, one of whom was heir-at-law to the testator; and where it appeared that they were aware of the existence of two former wills, although in their answers in a suit, asking a schedule of the deeds and documents, they did not set them out: Held, that the compromise must be set aside, the plaintiffs to pay the costs of the formal defendants, and the other defendants to pay the remainder.

WILLIAM PINCOMBE, by his will, bearing date in 1837, gave an estate called Great Woods, in the parish of South Molton, Devon, to trustees, for the benefit of his daughter, who married the plaintiff, Mr. Smith, in February, 1843. The testator died in July, 1843, and the trustees, who were also executors, and one of whom was heir-at-law, permitted her to receive the rents until March, 1840. An administration suit had been instituted against the trustees, who put in separate answers, and alleged that the will of 1837 had not been duly executed as the witnesses had not signed it in the testator's presence, and also that one of them was the husband of a legatee. A brother of the testator, who was the trustee of an outstanding term assigned to him on the purchase of the estate by the testator to attend the inheritance, thereupon brought an action of ejectment against the plaintiff, and a bill was filed to restrain such action, but no order was made, on an undertaking of the brother not to set up the outstanding term. A compromise was then proposed, and three deeds were, on the 19th December, 1845, executed, securing an annuity of 25*l.* to the plaintiff, on her agreeing to release her right to, and conveying, the estate and executing a general release to the trustees. After the execution of these deeds, it was ascertained that there were two former wills dated in 1835, which had been properly executed, and contained a similar devise of the estate as in the will of 1837.

This suit was therefore instituted to set aside the compromise on the ground that she had been kept in ignorance of the two former wills. It appeared from the evidence on behalf of the defendants, that Mrs. Smith had herself produced the three wills after the funeral of the testator, and that they were read aloud before her.

Bethell, Shce, and W. Terrell for the plaintiffs; Rolt and Pollett for the defendants; Kerslake for other parties.

The Vice-Chancellor said, that the plaintiff and her husband, upon filing their bill and requiring the defendants to set out in their schedule the deeds and documents relating to the title of the estate, might reasonably have expected that all of them would have been so set forth therein. There was no reason assigned for not inserting the two former wills which were actually in the defendants' possession;

and it was manifest from their separate answers that they knew from the beginning where the wills were, showing that either they made no inquiry, or were guilty of wilfully concealing the existence of the wills. It appeared that the plaintiff, at the time of the funeral was not 20 years of age, and, although she might have had some faint knowledge of the wills from what was alleged to have taken place, yet, if a true answer had been put in by the defendants setting out such wills, the compromise would never have been effected. The plaintiffs had thus been deprived of the knowledge of the existence and contents of those wills by the acts of the defendants, and were consequently not bound by what took place. The compromise must therefore be set aside—the plaintiffs to pay the costs of the formal defendants, and the other defendants the remainder.

July 25.—*Beard v. Egerton*—Stand over to 2nd Seal in Michaelmas Term.

— 25.—*Evans v. Evans*—Exceptions to report overruled.

— 26.—*Benyon v. Nettlefold*—Injunction to restrain proceedings at law dissolved with costs.

— 25, 26.—*Granville v. Betts*—Demurrer overruled to re-amended bill of revivor and supplement.

— 28.—*Ex parte Wills, Somerset, and Weymouth Railway Company*—Order for payment to Company of money paid into Court on taking possession of land.

— 30.—*Ex parte Asholme, Gainsborough, Goole and York and North Midland Rail. Co.*—Order for winding up, refused.

— 30.—*In re Wallis' Trust*—Order to pay money out of Court to nephew of testator.

— 31.—*Ex parte Palmer, in re Brighton and Chichester Railway Company*—Costs of application to pay money out of Court to be paid by company.

— 31.—*In re Ferris' Trust*—Order for payment out of Court of fund paid in under the 10 & 11 Vict. c. 96, with costs out of general fund.

Vice-Chancellor Knight Bruce.

In re London and Westminster Mutual Life Assurance Company. June 22, 1849.

WINDING-UP ACT.—LIFE ASSURANCE COMPANY.

Order made, under the 11 & 12 Vict. c. 45, for winding up a life assurance company which had been dissolved, it appearing that there was a sum of 4,000*l.* in the hands of trustees for the benefit of the shareholders.

Semble, a life assurance company is within the provisions of the Joint-Stock Companies' Winding up Act.

THIS was a petition for an order to wind up the affairs of the above company. It appeared that the company had been dissolved in 1844, and that the business was transferred to the Britannia Life Assurance Office. There was,

however, a sum of 4,000*l.* in the hands of trustees for the benefit of the shareholders of the company.

Cole in support of the petition; Grove for the directors who consented to the petition; Esart, for other shareholders, contra, contended that the petition ought not to be granted on the ground that the company was already dissolved, and that the company was not within the act.

The Vice-Chancellor, however, held that the company was within the 11 & 12 Vict. c. 46, and made the order for winding up, there being a sum of 4,000*l.* to divide among the shareholders.

July 25, 26. — *Briggs v. Penny* — Cur. ad. vult.

— 26. — *Du Rumigny v. May* — Ex parte injunction granted restraining agent of partnership from selling certain goods.

— 27. — *In re Brighton and Chichester Railway Company* — Stand over.

— 27. — *In re Bedfordshire, Hertfordshire, and Essex Junction Railway Company* — Order for winding up.

— 27. — *In re Great Western Extension Atmospheric Railway Company* — The like.

— 27. — *In re Dover, Hastings, and Brighton Junction Railway Company* — The like.

— 27. — *In re Bawcen Iron Company* — The like.

— 27. — *Attorney-General v. Gibbs* — Petition refused to pay part of fund in Court for costs, with leave to attend the Master.

— 28. — *Silvester v. South Eastern Railway Company* — Stand over.

— 30. — *Ex parte Watson, in re Watkins* — Order for choice of new assignees — Costs reserved.

Vice-Chancellor Wigram.

July 27. — *Clegg v. Fishwick* — Cur. ad. vult.

— 27. — *Whiston, clerk, v. Dean and Chapter of Rochester* — Part heard.

— 25, 28. — *Brogden v. South Eastern Railway Company* — Order for delivery up of railway by attachment to the company on paying the expedition-money into Court.

— 30. — *Brogden v. South Eastern Railway Company* — Leave to give notice of motion to obtain possession of railway.

— 30. — *Hunter v. Nockolds* — Held, that an annuity secured by covenant can be recovered for any period not exceeding 20 years.

— 30. — *Danford v. Cameron's Coalbrook Steam Coal and Swansea and Loughor Railway Company* — Ex parte injunction refused to restrain company from proceeding against plaintiff for certain calls, with leave to give notice of motion.

— 31. — *Danford v. Cameron's Coalbrook Steam Coal and Swansea and Loughor Railway Company* — Injunction refused, with costs, restraining directors from making and enforcing calls.

Queen's Bench.

(Before the Four Judges.)

Barker v. Lambert. May 7, 1849.

ACCOUNT OF ACTIONS BROUGHT IN PLAINTIFF'S NAME.—RETAINER OF ATTORNEYS.

Rule nisi on attorneys to give account of actions brought in plaintiff's name and monies received therein, discharged, but without costs, on the ground that, although the rule was granted as against the plaintiff's own attorneys, and the retainer was given by certain members of the committee of a railway company, an account thereof ought to be rendered.

A RULE nisi had been obtained calling on Messrs. Dickson and Overbury, attorneys, to show cause why they should not render to the plaintiff an account of all actions brought by them in his name of the monies received therein. It appeared that the plaintiff, having a claim against the Jamaica Atmospheric Railway for advertisements, was about to sue the committee for the same, when three of the committee agreed that if he would not sue them but allow them to sue the refractory members in his name, his demand should be satisfied out of the surplus remaining after discharging some of the most pressing claims. The actions were accordingly brought in the plaintiff's name by Messrs. Dickson and Overbury, but they refused to render any account thereof to the plaintiff on the ground that the actions in question had been brought on the retainer of certain members of the committee and for their benefit.

Shee, S. L., and Lush, against the rule, contended, that the rule nisi had been granted as against the plaintiff's own attorneys to give an account of actions brought on his retainer, which was not the fact in the present case, and that it ought therefore to be discharged.

Humfrey, Q. C., and Wilby in support of the rule.

The Court held, that there was no ground for the Court to exercise its summary jurisdiction, as the relation of attorney and client did not exist, and discharged the rule, but without costs, on the ground that an account of the actions ought to be rendered.

Queen's Bench Practice Court.

(Coram Coleridge, J.)

Regina v. Newton. May 2, 3, 5, 1849.

HABEAS CORPUS.—DISCHARGING OF JURY WITHOUT GIVING VERDICT.

Held, that the judge may discharge a jury in a trial for felony where the prisoner was committed under a justices' warrant and the jury cannot agree.

Held also, that the justices' warrant committing for trial remains in force until the prisoner be discharged by due course of law.

There was an application for a writ of habeas corpus, to bring up the body of the defendant to be discharged. It appeared from the affidavits, that the prisoner had been tried on a

charge of murder at the last Shrewsbury Assizes, before Mr. Justice Coltman, and that the trial had lasted one entire day and a great portion of the next. The jury then retired to consider their verdict, and were locked up all night. On the following morning they stated that they could not agree, and were discharged without giving any verdict. The prisoner was, however, still kept in custody.

Huddleston, in support of the application, contended, that the custody was illegal, inasmuch as the jury having already heard the case and having been discharged without the prisoner's consent, no other jury could try the prisoner: citing, 3 Inst. 110, cap. 47; 2 Hawk. c. 47, s. 1; Co. Litt. 227, b.; Cro. Car. 484; *Is re Ferrars*, Lord Raym. 84; *Re v. Perkins*, Carthew's Rep. 465, decided in 1698; 3 Burn's Justice, by Chitty, tit. *Jurors*, 535; *Lord De-la-mere's case*, 4 State Trials, 232; *Kinloch's case*, Post. 16; and *Sir John Wedderbourn's case*, Post. 22; and *Re v. Edwards*, Russ. & Ry. C. C. 224; 4 Taunt. 309; 2 Leach, C. C. 621.

Cur. ad. vult.

The Court, (May 3,) said, that on the present state of the affidavits the rule could not be granted; but that, as the case was a new one, the application might be renewed on fresh affidavits as to the circumstances connected with the discharge of the jury.

Further affidavits having been filed containing new matter, the motion was renewed, and

The Court, (May 5), granted a rule nisi.

The Attorney-General, on May 24, having showed cause against the rule, which was supported by *Huddleston*,

The Court of Queen's Bench held, that as the prisoner had been committed under a justices' warrant for the commission of a crime, she was to be kept in custody until discharged by due course of law, and that the judge who presided at the trial had exercised a discretion which the circumstances of the case justified, and that the jury had been rightly discharged. The rule nisi was, therefore, discharged.*

Court of Common Pleas.

Kinning v. Buchanan. June 25, 1849.

WARRANT OF COMMITMENT.—COUNTY COURT.—IRREGULARITY.—ATTORNEY.

A warrant of commitment, under the 9 & 10 Vict. c. 95, s. 99, for default in paying the instalments ordered by the judge to be paid in satisfaction of a judgment recovered, must set out that a summons has been obtained after default and before the issuing of the warrant; and therefore, in an action for trespass by reason of imprisonment under a warrant, which did not contain such allegation of summons, it was held invalid and the plaintiff entitled to recover.

Held, also, that the attorney acting in the cause and pleading to the action a special

plea of justification, is liable for such trespass.

THIS action was brought for false imprisonment, by the defendant in an action in an inferior Court against the plaintiff's attorney therein, who had caused the present plaintiff to be imprisoned under the following circumstances:—A judgment had been recovered in an inferior Court by one Townley against the plaintiff, and an order was made under the 9 & 10 Vict. c. 95, s. 99, for the payment of the amount thereof by instalments. Default having been made in the payment of such instalments, a warrant of commitment was issued at the request of the present defendant, acting as Mr. Townley's attorney, under which the plaintiff was committed for 40 days.

By the 98th section of the County Courts' Act, it is enacted, that "it shall be lawful for any party who has obtained any unsatisfied judgment or order in any Court held by virtue of this act, or under any act repealed by this act, for the payment of any debt or damages or costs, to obtain a summons from any county court within the limits of which any other party shall then dwell or carry on his business, such summons to be in such form as shall be directed by the rules made for regulating the practice of the County Courts as herein provided, and to be served personally upon the person to whom it is directed, requiring him to appear at such time as shall be directed by the said rules, to answer such things as are named in such summons." And by the 99th section it is provided, that "if it shall appear to the satisfaction of the judge of the said Court, that the party so summoned has then, or has had since the judgment obtained against him, sufficient means and ability to pay the debt or damages or costs so recovered against him, either altogether, or by any instalment or instalments, which the Court in which the judgment was obtained shall have ordered, and if he shall refuse or neglect to pay the same as shall have been so ordered, or as shall be ordered pursuant to the power hereinafter provided, it shall be lawful for such judge, if he shall think fit, to order that any such party may be committed to the common gaol or house of correction of the county, district, or place in which the party summoned is resident, or to any prison which shall be provided as the prison of the Court, for any period not exceeding 40 days." The defendant pleaded not guilty, and also a special plea of justification under the warrant of commitment; to which the plaintiff replied traversing the order of commitment *modo et formâ*. The order was produced at the trial and admitted by the judge, whereupon a verdict was returned for the defendant. A rule nisi had therefore been obtained for a new trial, on the ground that the warrant of commitment was defective in not stating the summons to the plaintiff under the 98th section, after default and before commitment. It was contended for the defendant, that the traverse of the order did not put in issue the validity thereof; that the defendant

* A new trial has just taken place, and again the jury could not agree.

was protected as acting only as the attorney in the matter; and that no notice or summons was requisite previous to commitment.

The Court said, that where an attorney, acting as such, merely sets in motion a Court of competent jurisdiction, he is not liable in trespass. In the present case, however, it was essential, as he relied on a special plea of justification, that the warrant should be valid, and its validity was clearly in issue upon the traverse. As the warrant did not allege any previous summons to the plaintiff, it was bad according to the case of *Ex parte Kinning*, 4 C. B. 307. The judge should, therefore, have directed the jury to find for the plaintiff, and the rule for a new trial must be made absolute.

Eschequer.

Gull v. Lindsay. June 9, 1849.

STATUTE OF FRAUDS.—AGREEMENT TO PAY DEBT OF THIRD PARTY.

A ship-broker entered into an agreement with certain shipowners to procure a vessel to be chartered in consideration of his commission, and he was to pay the same out of the receipts of the freight. Some change took place in the owners, and on the return of the vessel they promised, not however in writing, to pay the commission on his foregoing his claim to collect the freight: Held, that, under the 29 Car. c. 3, this promise must be in writing, as being an agreement to pay the debt of a third party.

THIS action was brought on a special agreement by the plaintiff, a ship-broker, who agreed with the owners of a vessel to procure a party to charter her in consideration that he was to receive the freight so as to reimburse himself thereout for the amount of his broker's commission. The defendant pleaded *non assumpsit*. The ship was chartered, proceeded on her voyage, and returned to England. Some change had, however, taken place during her absence amongst the owners, and when the plaintiff, pursuant to his agreement, which was not in writing, proceeded to collect the freight, the defendants undertook to pay him his broker's commission, if he would forego his right to collect the freight, and would allow them to obtain immediate possession of the ship. They, however, neglected to perform their promise, whereupon this action was brought, and a verdict given for the plaintiff. The defendants having obtained leave to move to enter the verdict for them, or for a nonsuit, on the ground that the promise to pay the plaintiff his commission ought to be in writing under the Statute of Frauds, a rule *nisi* was obtained.

The Court held, that the agreement was in the nature of a promise to pay the debt of another, as the debt for the plaintiff's commission remained due from the original owners of the vessel, and should therefore, under the 29 Car. 2, c. 3, have been in writing; and made the rule absolute to enter a nonsuit.

Nisi Prius.

(Coram Wilde, L. C. J.)

Parker v. Pinner and Burdon. June 29, 1849.

WARRANT OF COMMITMENT.—PALACE COURT.—MISTAKE.—NOTICE OF ACTION.

In an action against an officer of the Palace Court for arresting, and the governor of the Whitecross-street Prison for receiving and detaining the plaintiff under a warrant of commitment of that Court against another person: Held, that the governor of the prison was entitled to notice of action under the 52 G. 3, c. ccix., and that the Palace Court officer was liable for his mistake.

THE plaintiff resided at Peterborough, and was on the 21st March, 1849, in Bishopsgate Street, talking to a friend, when the defendant, who was an officer of the Palace Court, arrested him, under a warrant of commitment for 35 days, issued by the judge thereof against one J. B. Parker, for not appearing to answer in an action brought by Mr. Till, a livery stable-keeper at Chelsea. The plaintiff protested he knew nothing of the matter, and stated that his name was Charles Thomas Parker, his friend confirming his statement, and offered to go to his attorney across the road for corroboration of the fact. The defendant, however, refused, and took the plaintiff to Whitecross-street prison. The plaintiff on his arrival gave the officer notice that he was not the person named in the warrant, and cautioned them against receiving him; but he was, nevertheless, detained in custody for three days, when he was liberated upon its being ascertained that the party named in the warrant was already in the prison at the suit of another creditor. This action was therefore brought for trespass and false imprisonment—the defendant Pinner pleaded the general issue; and defendant Burdon also pleaded want of notice, under the 52 G. 3, c. ccix..

Chadwick Jones, S. L., and Charnock for the plaintiff.

Byles, S. L., for Burdon, the governor of Whitecross-street Prison, contended, that his client was entitled to notice of action under the 52 G. 3, c. ccix., under which the prison was built and regulated, and which requires a month's notice before bringing an action for anything done under the statute, and it had not been shown that he had acted other than *bona fide*.

Metcalfe for defendant Pinner.

Wilde, C. J., held, that the defendant Burdon was entitled to notice under the 59 G. 3, c. ccix., and directed the jury to find a verdict for him. As to the defendant Pinner, he had unlawfully arrested the plaintiff and delivered him to the other defendant, and was therefore liable for the detention. It was, however, to be remembered that he was acting as an officer of the law, and that the plaintiff had not acted as energetically as he might in obtaining his release.

A verdict was returned for the plaintiff, with 50*l.* damages.

Prerogative Court.

(Coram Sir H. J. Fust.)

Playne v. Scriven. June 28, 1849.

WILL.—PROBATE.—ATTESTATION.

Where a will was duly attested, but, upon it being discovered that a bequest to one of the attesting witnesses would be void under the 1 Vict. c. 26, s. 15, that witness's name was struck out, and a third party's substituted—the testatrix and the other witness merely going over their signatures with a dry pen: Held, not a sufficient subscribing under the 9th section, and probate was decreed to the will as it originally stood.

This application was made for probate of the will of the testatrix, Elizabeth Kean. It

appeared that, after the execution of the will, it was discovered that a bequest of 19 guineas to one of the attesting witnesses would be void under the 1 Vict. c. 26, s. 15, and a third party was called in and the testatrix and the other witness went over their signatures with a dry pen. The name of the former witness was struck out and the new one signed.

Drs. Jenner and Dean in favour of probate under the second attestation.

The Court held, that, as by the 9th section of the Wills' Act witnesses were required to attest and subscribe the will in the presence of each other, the mere tracing the former signature only amounted to an acknowledgment thereof, and was not a compliance with the statute. The probate must, therefore, pass for the will with the first two witnesses.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Equity.

CONSTRUCTION OF STATUTES.

[For the previous Sections of this Series of the Digest in the present Volume, see,—

Privy Council :

Appeals, 88.

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Appeals, 171.

Courts of Bankruptcy, 211.

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Law of Wills, 254.]

ANNUITY.

1. *Delivery up to insolvent grantor.*—Held, that the grantor of annuity, having taken the benefit of the act, was not entitled to sue for the delivery up of the annuity deed, which had been found void at law, as the stat. 1 & 2 Vict. c. 110, s. 80, discharged him from all liability and vested his property in his assignees. *Douglas v. Smith*, 37 L. O. 492.

2. *Enrolment of Securities.*—Where an annuity was partly secured by deeds deposited, with a written memorandum, and partly by a bond duly enrolled—the whole of the securities must be enrolled, and a petition for a sale of the securities not enrolled was dismissed. *Ex parte Müller, In re Swann*, 37 L. O. 357.

APPORTIONMENT.

Charity.—Certain charities were held not apportionable, under section 22 of 8 & 9 Vict. c. 70, and others apportionable, and reference as to rest made to the Master.

Quere, whether the distribution of the fund apportioned is to be made by the incumbent alone, or in connection with the churchwardens. *Ex parte the Incumbent of Brompton, In re the Kensington Charities*, 37 L. O. 255.

BUILDING SOCIETIES.

Mortgage.—A shareholder in a building society having mortgaged his shares to the society, was held not entitled to redeem without paying the future subscriptions. *Mosley v. Baker and others*, 37 L. O. 334.

CATTLE INSURANCE COMPANY.

No order of reference will be made under the Joint-Stock Companies' Winding-up Act, except in a very clear case and one free from difficulty.

Semble, that a company for the insurance of animals is not within the act. *Ex parte Spackman, In re the Agriculturist Cattle Insurance Company*, 37 L. O. 255.

CHARITY.

See Apportionment : Municipal Corporation.

CONTRACT.

Lien on calls.—A contract to supply funds to a company is within section 29 of the 7 & 8 Vict. c. 110; and a contract for such purpose, not submitted to, or confirmed by, the shareholders, under that section, held void.

Injunction dissolved, restraining payment of calls to other than certain parties under the contract. *Feversham v. Camerons, In re Coalbrook Steam Coal, and Swansea and Lougher Railway Company*, 37 L. O. 255.

2. Where work not included in a contract, which required a written order in a certain form, was done with the privy of the company and their engineer: Held, that it could not be deemed extra, as no written order had been given.

Semble, that any claim must be made at law, by action of covenant. *Nixon v. Taff Vale Railway Company*, 37 L. O. 240.

CONTRIBUTORY.

1. *Joint-Stock Companies' Winding-up Act*—A man may be liable to the creditors of

company without being liable to have his name inserted in the list of contributories. *In re Fenwick*, 1 De G. & S. 557.

2. *Semble*, that liability to creditors of the company is not of itself sufficient to make a person a "contributory" within the act. *In re Angus*, 1 De G. & S. 560.

3. *Administrator of deceased brother*.—An administrator to a deceased brother, not being his legal representative, was held to be wrongly inserted in the list of contributories; and the report was sent back to the Master to be reviewed. *Ex parte Glaholm, In re Joint-Stock Companies' Winding-up Act*, 37 L. O. 293.

4. A father, who had purchased shares in a banking company for his son, misrepresenting him as of age, and afterwards covenanting by deed that his son should perform the requirements of the directors, is liable as a contributory, under the 3rd section of 11 & 12 Vict. c. 45, by the words "or otherwise howsoever." *Ex parte Reaveley, In re the North of England Joint-Stock Banking Company*, 37 L. O. 253.

5. *Father of infant shareholder*.—*Indemnity*.—Shares in a banking company were purchased for an infant without disclosing his infancy, the vendor signing a certificate, required by the company's rules, that the purchaser was of age. On the discovery of the infancy, the infant's father covenanted with the public officer and two directors of the company that the infant should perform the agreements contained in the company's deed of settlement, and to indemnify the company: *Held*, that the father's name was properly placed on the list of contributories, under the Winding-up Act, 1848. *In re Reaveley*, 1 De G. & S. 550.

6. *Husband of a registered shareholder acting as agent*.—A married woman became, by such description, a registered shareholder in a joint-stock banking company, having purchased the shares with money arising from her separate estate.

The husband occasionally received the dividends on the shares, but always signed the receipts as his wife's agent. Though not a registered proprietor, he attended some meetings, and once held the proxy of an absent shareholder, which, according to the deed of settlement, a shareholder alone could do, and he took part in the proceedings. Previously to the dissolution of the company, his name had been substituted, without his consent, for that of his wife in the share register: *Held*, that he was not a contributory under the act, and his name was, upon motion, ordered to be struck out of the list. *Angus, in re*, 1 De G. & S. 560.

7. Exceptions to the Master's report inserting a husband in the list of contributories in respect of shares purchased by the wife out of her separate estate, allowed. *Ex parte Angus, in re the North of England Joint-Stock Banking Company*, 37 L. O. 249.

8. *Executor receiving dividends*.—By the deed of settlement of a banking company, exe-

cutors of deceased shareholders had the option of becoming shareholders on giving certain notice, or of selling the shares; and, until the option was exercised, the dividends might be retained by the company, as a guarantee fund. In default of any person executing the deed in respect of such shares, after six months' notice, the shares were liable to forfeiture. A shareholder in the company bequeathed his shares to his executor, in trust to convert them into money. The executor sold some of the shares, but did not give the proper notice to make himself a shareholder as to the rest, and was, nevertheless, permitted to receive the dividends on them for five years, signing the receipts as executor only: *Held*, that he was not a contributory without qualification. *In re Armstrong*, 1 De G. & S. 565; 37 L. O. 377.

9. *Shareholder in banking company under 7 G. 4, c. 46*.—A., a shareholder in a joint-stock banking company, established under the 7 G. 4, c. 46, effectually assigned his shares in the company more than three years prior to the winding up of such company, under 11 & 12 Vict. c. 45. It appeared that there was at least one other former shareholder in the same situation: *Held*, that A. had been properly included in the list of contributories, and that it was no objection that his name had been placed on the list upon notice given by a continuing shareholder. *Hawthorn, in re*, 1 De G. & S. 571; 37 L. O. 319.

10. *Notice to a contributory as executor*.—The brother of a shareholder who died intestate was allowed by the company to receive dividends on the intestate's shares, without administering to his estate, on his signing receipts as representative of the intestate: *Held*, that it was not competent for the Master, upon a notice to the brother, that his name was intended to be inserted in the list of contributories in his representative character, to insert his name as a contributory without qualification. *In re Glaholme*, 1 De G. & S. 583.

11. *Father of infant*.—Where shares in a banking company had been transferred into the name of a minor by his grandmother, but the dividends had been paid to his father, and he had covenanted with the company for the payment, by the son, of all instalments in respect of those shares, and to indemnify the company against any loss which might be occasioned to them by reason of the son's minority, or of the payment of the dividends, the name of the father was held to have been properly included, in respect of those shares, in the list of contributories, within the meaning of the Joint-Stock Companies' Winding-up Act. *In re North of England Joint-Stock Banking Co., ex parte Reaveley*, 1 H. & T. 118.

12. *Notice*.—*Jurisdiction of Master*.—On the death of a shareholder in a banking company, the dividends were paid to his brother, the bank having notice that there was no legal personal representative. A notice was served upon him under the Joint-Stock Companies' Winding-up Act, that the official manager proposed to insert his name as a contributory in

respect of those shares, as the representative of the deceased shareholder: *Held*, that, under that notice, the Master had no jurisdiction to decide whether he was a contributory without qualification, or in any other character than as mentioned in the notice. *In re North of England Joint-Stock Banking Co., ex parte Glaholm*, 1 H. & T. 121.

13. *Father of infant cestui que trust.—Indemnity.*—A father purchased shares in a joint-stock bank, for two infant sons, in the name of their uncle as a trustee, and the uncle's name was so entered on the share register of the company. By an agreement afterwards entered into, the uncle admitted that the father was entitled to the profits of the shares till the minors became of age, and it was agreed, that then the uncle should assign the shares to the two minors, and the father agreed to indemnify the uncle in respect of the shares. The uncle received the dividends, and paid them to the father: *Held*, that the father's name ought not to be inserted on the list of contributories, under the Winding-up Act, 1848. *In re Fenwick*, 1 De G. & S. 557; 38 L. O. 11.

14. A former member of a joint-stock company, having transferred his shares within three years of the date of the order for its dissolution, under the Joint-Stock Companies' Winding-up Act, 1848: *Held*, to be rightly included in the list of contributories settled by the Master under the 70th section. *In re North of England Joint-Stock Banking Company, ex parte Hawthorn*, 1 M'N. & G. 49.

And see *Joint-Stock Companies*.

INJUNCTION.

1. *Joint-Stock Company.—Debt.*—*Samble*. This Court will not restrain a creditor of a joint-stock company from enforcing payment of his debt against an individual shareholder, on the ground merely that the creditor is himself a shareholder, and therefore liable to contribute, as such interference would defeat the rule at law, which, for convenience, enables creditors of such companies to recover their debts by that form of proceeding. *Ransom v. Smith*, 2 Phill. 726.

2. Injunction granted against a railway company restraining them from entering upon land where the appointment of valuer was made by one magistrate only, and the plaintiff claimed more than had been paid into Court. *Willey v. The South Eastern Railway Company*, 37 L. O. 356.

3. Where the deviation from the line in the Railway Act is within the limits allowed, an injunction will not be granted. *Beardmore v. London and North Western Railway Company*, 37 L. O. 432.

See *Contract*, 1.

INSOLVENT.

See *Annuitant*, 1.

JOINT-STOCK COMPANIES' WINDING-UP ACT.—11 & 12 VICT. c. 48.

1. By the 7th head of sect. 5, contributories may petition for winding up the company where

business is only carried on for the purpose of winding up its affairs, and the same is not completely wound up, although there be no outstanding debts to strangers.

An action, suit, or other proceeding pending at the date of the petition, is no objection to an order of reference under the act. *In re Marylebone Joint-Stock Banking Company, ex parte Troutbeck*; *Ibid.*, *ex parte Walker*, 37 L. O. 218.

2. *Held*, (affirming the decree of the Vice-Chancellor Knight Bruce,) that the insolvency of a joint-stock cattle insurance company was not proved by showing a loss on the premiums in consequence of the average being too low and the excess of future liabilities over the present capital, as the former might be altered, and the latter could not be considered, the liability being remote and the premiums on the policies forming a fund to meet the policies when due. *Ex parte Speckman, in re the Agriculturist Cattle Insurance Company*, 37 L. O. 511.

3. *Contributory.*—*Held*, that an executor of a deceased party was, under the circumstances, wrongly inserted in the list of contributories under the 11 & 12 Vict. c. 45, s. 3.—*Ex parte Armstrong, in re the North of England Joint-Stock Banking Company*, 37 L. O. 377.

See *Contributory*.

LAND.

1 *W. 4, c. 60.—Bengal government notes.*—Bengal government notes are land within the meaning of the act, 1 W. 4, c. 60. *In re Dyce Sombra, ex parte M'Donnell*, 1 M'N. & G. 101.

LANDS' CLAUSES CONSOLIDATION.

1. The instrument by which a surveyor is appointed under the 85th section of the Lands' Clauses Consolidation Act, need not specify either the lands which the surveyor is to value, or the course of the railway.

The sureties in a bond to be given to the landowner, under that section, may be appointed without notice to the landowner; but the money secured by it ought not to be made payable on demand. The condition of the bond ought to adopt the words of the section, and make the money payable either to the obligee or into the Bank of England, "as the case may require."

Money paid into the bank under the 86th section, to the credit of *ex parte* the promoters of the undertaking, the account of the landowner, held to be rightly paid in. *Poynder v. Great Northern Railway Company*, 16 Sim. 3.

Case cited in the judgment: *Bridges v. Wilts, Somerset, and Weymouth Railway Company*, 4 Rail. Ca. 622.

2. *Condition of bond.*—A bond to secure the payment of the compensation money to, or the deposit of it in the bank for, A. B., his executors, &c., but not referring to "the parties interested in the premises," is sufficient to satisfy the terms of the 85th section of the Lands' Clauses Consolidation Act, where the company think proper to treat with the claimant as the party really entitled to the land.

Willey v. South Eastern Railway Company, 1 H. & T. 56.

3. *Neglect of company to settle with owner.*—The fact that a railway company has had ample time for settling with the owner of land as to the amount of compensation, but has neglected to do so, will not preclude them from taking possession, under the 85th section of the Lands' Clauses Consolidation Act, upon complying with the directions of that section; and if the company take possession, when, in consequence of some false step, they were not entitled to do so, that section does not become inoperative, but they are at liberty to correct their error, and their possession will then be authorised. *Willey v. South Eastern Railway Company*, 1 H. & T. 56.

4. *Construction.—Bond.—Interest.*—Where a party has a beneficial interest in property proposed to be taken by a railway company, it is competent for the company to deal with him solely in respect of such interest; and in giving the bond and complying with the other requirements of the 85th section of the Lands' Clauses Consolidation Act, 1845, it is requisite for the company only to have regard to the particular interest of the party from whom they so purchase. The circumstance, that the original taking possession by the company had been irregular from the insufficient amount of the bond given, is no objection to a subsequent bond given in a sufficient amount, so as to exclude the operation of the 85th section.

Although in such a case a question may arise as to the time from which interest will be payable, yet the Court will not, on this account, restrain the company from proceeding with their works after giving a bond in the terms pointed out by, and complying with the other provisions of, the 85th section. *Willey v. South Eastern Railway Company*, 1 M.N. & G. 58.

See *Railway*, 1.

LUNACY.

Ad interim committee.—1 W. 4, c. 60, s. 3.—Ad interim committee incapable of conveying under the act 1 W. 4, c. 60, s. 3. *In re Poulton*, 1 M.N. & G. 100.

MARRIAGE ACT.

In settling the property of a minor, who has been married in fraud of the provisions of the Marriage Act, 4 G. 4, c. 76, the Court is bound to carry into effect the directions given by the act for preventing the offending party from deriving any pecuniary benefit from the marriage, as far as may be without prejudicing the pecuniary interests of the innocent party and the issue of the marriage. And therefore, in a case where the minor was a female, the Court refused its sanction to a general power of appointment being given to her, in case she should die before her husband, over one-third of her property, though there should be children, as she might exercise it in favour of her husband to the prejudice of the children; but

the Court approved of a power being given to her, in case she survived her husband, though there should be children, of appointing one-third either by deed or will, as it was for her benefit to be able in that case to make provision for a second marriage.

Held, also, that it was no objection to the settlement, that a child dying in the lifetime of the father, after having attained a vested interest under its limitations, might bequeath such interest to the father. *Attorney-General v. Lucas*, 2 Phill. 753.

MINING COMPANIES.

1. The 2nd section of the Joint-Stock Companies' Winding-up Act is not intended to extend the operation of the act to all mining companies; but it merely declares that such companies as would have been within the provisions of the act under the 1st section, if they had been established for any other purpose, are not to be excluded merely because they are mining companies, *semble*. *In re Wheel Lovell Mining Company, ex parte Wyld*, 1 H. & T. 125.

2. *Cost book principle.*—A mining company, on the "cost-book" system, formed before the passing of the Joint-Stock Companies' Winding-up Act, is not within its operation. *In re Wheel Lovell Mining Company, ex parte Wyld*, 1 H. & T. 125.

3. Mining companies formed before the passing of the act 11 & 12 Vict. c. 45, are not within its provisions, the intention of the 2nd section being only to bring the associations therein mentioned within the description and operation of the 1st section. *In re Wheel Lovell Mining Company, ex parte Wyld*, 1 M.N. & G. 1.

MORTGAGE.

See *Building Society*.

MORTMAIN ACT.

Bank Shares.—*Held*, that railway debentures for moneys borrowed upon the credit of the undertaking are not charged upon land within the Statute of Mortmain; but certain bank shares, *held* to be within the act. *Myers v. Perigal*, 37 L. O. 452.

MUNICIPAL CORPORATION.

Charity.—Trustees.—Since the passing of Municipal Corporation Act, the estates of the Hospital of St. John, at Chester, were *held* to be devested from the corporation, and new trustees were appointed under the act, there being no corporation in the master and brethren of the hospital. *Attorney-General v. Corporation of Chester*, 37 L. O. 334.

PIER COMPANY.

Not within the Winding-up Act.—A pier company, incorporated by act of parliament, with power to levy tolls for the use of the pier, (including its use as a promenade,) to erect baths, quays, wharfs, and warehouses: *Held*, not so clearly a trading or commercial company, as to be within the Joint-Stock Com-

panies' Winding-up Act, 1848, which ought only to be applied in plain cases.

Quære, whether a case at law can be directed to determine if a company is within the act. *Ex parte Barge*, in *re Herne Bay Pier Company*, 1 De G. & S. 588.

RAILWAY.

1. *Deposit.*—*Land clauses.*—The sum deposited by a railway company in Court under the 85th section of the Lands' Clauses' Act, 8 Vict. c. 18, is not subject to any lien for the costs of the vendor; but upon due performance of the condition of the bond mentioned in the same section, the company are entitled to have the money paid out to them, notwithstanding the pendency of a question between them and the vendor with respect to such costs. *Ex parte Stevens*, in *re London and South Western Rail. Extension Act*, 2 Phill. 772.

2. *Indifference of surveyor.*—*Form of bond.*—A nomination by the justices, under 8 Vict. c. 18, s. 85, of the surveyor employed by the company, and who has already in the course of such employment valued the land, does not necessarily invalidate a bond under the section.

The approval of sureties in a bond under the same section may be given by the justices, on an *ex parte* application of the company.

But if such a bond be made to landowners jointly, they being tenants in common of the land, it is not a sufficient compliance with the act.

Semble, that the conditions of the bond must be for payment absolutely, and not on demand. *Langham v. Great Western Railway Company*, 1 De G. & S. 486.

3. *Summoning jury.*—*Taking interim possession.*—*Injunction.*—Notice given to a landowner by a railway company of their intention to summon a jury, does not render it inequitable for them to proceed in the meantime under the 8 Vict. c. 18, s. 85, to obtain possession.

Nor is it a sufficient ground to restrain the company from changing the aspect of the property, that the jury may be thereby prevented from accurately awarding compensation with reference to its original state. *Langham v. Great Northern Railway Company*, 1 De G. & S. 486.

4. *Architect's charges.*—The charges of an architect on rebuildings must be paid out of the purchase money, not as additional expenses. *In re Wainman*, 37 L. O. 473.

5. *Specific performance.*—The Court will direct the specific performance of an agreement by providing certain convenient ways from one portion of land to another, without erecting a bridge. *Sanderson v. The Cuckermouth and Worlington Rail. Co.*, 37 L. O. 317.

And see *Mortmain Act*.

RAILWAY CLAUSES' CONSOLIDATION.

A notice given by a railway company, under the 32nd section of the Railway Clauses' Consolidation Act, of their intention to take temporary possession of land, ought to state for which of the purposes mentioned in that section the land is meant to be used. A notice

that the company intends to enter upon the land for those purposes, or some or one of them, is not sufficient. *Poynder v. Great Northern Railway Co.*, 16 Sim. 3.

THELLUSSON ACT, 39 & 40 GEO. 3, C. 98.

Trust—A sum of stock was by deed transferred to trustees on trust to accumulate the dividends during the joint lives of A. and B., and on the decease of A., if B. should be then living, on trust to pay B. the dividends of the stock and the accumulations for life, and after the decease of B., whether the same should happen in the lifetime of A. or not, the capital and accumulations to be in trust for D. on attaining 21, or marriage: *Held*, first, that in construing the act, the same construction must be applied to a deed as to a will; and secondly, that the above trust was good only for so much of the joint lives of A. and B. as expired in the lifetime of the settlor. *In re Lady Rosslyn's Trust*, 37 L. O. 223.

WINDING-UP ACT.

1. *Compromise with contributories.*—An official manager of a joint-stock company appointed under the Winding-up Act, 1848, entered into an agreement with the executrix of a deceased shareholder, to accept 2,000*l.* in lieu of a much larger sum claimed to be due in respect of the then present call already made, and together with a security for the contribution by her towards any future calls, to the extent of 1,000*l.*, as a compromise of all claims of the company on the executrix and her testator, of which agreement the Master certified his approval by a special report. The Court, upon motion, confirmed the report. *In re Nisier Dale Iron Co.*, in *re Hughes*, 1 De G. & S. 606.

2. *Defaulting shareholder.*—The provisions of the 11 & 12 Vict. c. 45, are not to be used for the purpose of settling controverted points between individual shareholders and the company. Thus, where a company had instigated one of its creditors to recover from a defaulting shareholder a debt for which the company was liable, the Court held that the shareholder could not proceed to obtain a conditional order for dissolution under the 12th section of the act, and that the circumstances of the case in question, though falling within the scope of the 5th section, afforded no test of insolvency. *In re Wheel Lovell Mining Company, ex parte Wyld*, 1 M'N. & G. 1.

3. *Pendency of suit.*—*Preliminary inquiries.*—In order to obtain an order under the Joint-Stock Companies' Winding-up Act, 1848, for the dissolution of a company and the winding up of its affairs, it is not essential that there should be debts of the company remaining unpaid; nor is it an objection that a suit is pending, which has been instituted on behalf of the shareholders against the directors, for the purpose of making them personally liable for certain losses, but not asking for the dissolution of the company. *In re Marylebone Joint-Stock Banking Company, ex parte Walker*, 1 H. & T. 100; *Ex parte Troutbeck*, ib.

4. *Action by creditor against shareholder.*—

Insolvency of Company.—A dispute having arisen between a mining company and one of the shareholders, respecting his liability to pay calls, the company procured one of their exeditors to bring an action against him. He served notice of the action on the company, but they took no steps to stay the action or indemnify the shareholders. There were no circumstances to satisfy the Court that the company was not in a solvent condition: *Held*, that, although the case came within the letter of the 5th article of the 5th section of the 11 & 12 Vict. c. 45, yet, as the action arose out of the dispute between the shareholder and the company, and not from their inability to pay, he was not entitled, under the circumstances, to an order for winding up the concern. *In re Wheel Lovell Mining Co., ex parte Wyld*, 1 H. & T. 125.

5. Tests of insolvency.—*Evidence in opposition.*—If the tests which are directed by the act to be applied to try the solvency of a company strictly and literally apply to a particular company, but the presumption arising therefrom is rebutted by the evidence offered in opposition to the petition, so that there is no reason to believe that the company is insolvent, the Court will refuse to interfere. *In re Wheel Lovell Mining Co., ex parte Wyld*, 1 H. & T. 125.

6. Form of proceedings.—Form of petition, order, and proceedings under the Joint-Stock Companies' Winding-up Act. *In re North of England Banking Co., in re Joint-Stock Companies' Winding-up Act*, 1848, 1 De G. & S. 545.

7. Notice of insertion of name with qualification.—On a notice to a person that her name was inserted in the list as a contributory in a particular character, she attended before the Master by her solicitor, to oppose the insertion of her name altogether: *Held*, that she did not thereby waive any objection to the sufficiency of the notice, for the purpose of enabling the Master to decide that she was a contributory without qualification; and the Master who had so decided upon such a notice, was directed to review his report. *Quære*, whether, in such a case, a new notice can effectually be given. *In re Hutchinson*, 1 De G. & S. 563.

8. Executrix of deceased shareholder.—*Assets exhausted.*—A testator was a shareholder in a joint-stock banking company, which was established under the provisions of the 7 G. 4. c. 46; and, according to the deed of settlement of which, personal representatives of deceased shareholders might become shareholders, on giving certain notices. The executrix never gave the prescribed notices, but repudiated all interest in the concerns of the company. By her affidavit, in the course of the proceedings, under the Winding-up Act, 1848, she deposed that the testator's assets were under 20*l.*, and had been all exhausted in payment of debts:—*Held*, that her name had been properly placed upon the list of contributories as executrix. *In re Thomas*, 1 De G. & S. 579.

9. Losses of directors.—*Vender.*—*Contributory.*—Where a shareholder in a company had taken all the proper steps within her power to assign her share, but the directors omitted to assent to or dissent from the sale for a period exceeding two months, and until the company stopped payment: *Held*, that, nevertheless, the name of such shareholder had been properly placed upon the list of contributories without qualification. *In re Chartres*, 1 De G. & S. 581.

10. Pendency of suit.—It is not a sufficient objection to a petition for winding up the affairs of a company, under 11 & 12 Vict. c. 45, that there are no debts due from the company, or that the petitioner is one of the directors against whom a suit in Chancery is pending, seeking to make them personally liable to the shareholders for the losses of the company. *Ex parte Walker*, 1 De G. & S. 585; *Ex parte Transitbeck*, *ib.*

11. What not a commercial company.—A registered company for the insurance of agricultural cattle, *Held*, not so clearly a trading or commercial company as to be within the operation of the Winding-up Act of 1848. *Ex parte Spackman, in re Agriculturist Cattle Insurance Co.*, 1 De G. & S. 599.

12. Provisionally registered railway companies.—An order under the Winding-up Act, 1848, made in the case of a provisionally registered railway company. If no office of the company can be found, the Court may make the winding-up order, on the petition having been advertised according to the act, and upon a consent on the part of some member of the company. *In re Brighton, Lewes, and Tonbridge Wells Direct Railway Company*, 1 De G. & S. 604.

13. Mining companies on the cost-book principle are included in the 2nd section of the Joint-Stock Companies' Winding-up Act, (11 & 12 Vict. c. 45.) *In re Wheel Lovell Mining Co., ex parte Wyld*, 37 L. O. 213.

14. A company having disputed claims upon it, but not being insolvent, cannot be brought within the operation of the Joint-Stock Companies' Winding up Act, though otherwise liable to its provisions.

Where a question arises upon a doubtful construction of the act, costs will not be allowed. *In re 11 & 12 Vict. c. 45, and Wheel Lovell Mining Company, ex parte Wyld*, M. P., 37 L. O. 292.

15. A railway company, formed for the purpose of "conveying passengers and goods, is an association within the provisions of the Joint-Stock Companies' Winding-up Act, 1848, being for "a commercial or trading purpose, or for a purpose of profit;" and the company having failed, an order was made for winding it up under the provisions of the act. *Ex parte Barber, in re London and Manchester Direct Railway Co.*, 37 L. O. 492.

See *Cattle Insurance Company; Contributory; Joint-Stock Company; Mining Company; Pier Company.*

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SATURDAY, AUGUST 11, 1849.  
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LEGAL RESULTS OF THE SESSION OF PARLIAMENT.

ALTHOUGH many measures involving extensive changes in the law, have been abandoned, withdrawn, or postponed, upon various grounds, it must be admitted the legal results of the Session just brought to a close, are not deficient in variety or importance. Besides the *Bankrupt Law Consolidation Act*, and the *Small Debts' Act Amendment*, which formed the subject of repeated commentary in these pages, and are, undoubtedly, in a professional view, the most important measures of the Session, many other branches of the law have been subjected to legislative interference with greater or less promise of advantage.

We observe with some concern, that *six separate acts* obtained the Royal Assent during the Session, bearing directly upon the *Laws Relating to the Poor*.*

Assuming that the provisions contained in these several acts were one and all desirable and expedient, still it is matter of regret, that they should not have been comprehended in a single statute. When the subject is thus dealt with by piecemeal, as it were, we are forced irresistibly to the conclusion, that the Legislature has not proceeded upon any clear or defined principle, and that the enactments added to this branch of the law, have not been proposed or adopted for the furtherance of any sys-

tematized plan. The Poor Laws are necessarily to a great extent administered by those who are not professional lawyers, and the multiplication of legislative provisions to guide the conduct or influence the judgments of such persons, is already a serious evil well deserving the consideration of the Legislature.

The extent and variety of the statutory provisions, recently passed, affecting the jurisdiction and mode of procedure of justices at Petty and Quarter Sessions, have thrown a great additional burthen upon, and materially increased the responsibilities of, this important class of functionaries. The Session of 1849 has imposed upon the magistracy of the country, the obligation of making themselves familiar with the *Petty Sessions' Act*, (printed *ante*, p. 78,) and the more important measure which passed on the 28th ult., "To Amend the *Procedure in Courts of General Quarter Sessions of the Peace in England and Wales*, and for the Better Advancement of Justice in Cases within the Jurisdiction of these Courts." It will be more convenient to enter into an examination of the alterations introduced by this act in *Quarter Sessions Practice*, after the act has been submitted to our readers. It has been remarked, however, that the attempt to establish uniformity in the time fixed for notice of appeal by this act, is not a particularly favourable specimen of modern legislation. After reciting the expediency of rendering the law more uniform in cases of appeal, the first section enacts:

"That in every case of appeal (except as hereinafter mentioned) to any Court of General or Quarter Sessions of the Peace, fourteen clear days' notice of appeal at least shall be given, and such shall be sufficient notice, any act or acts, or any rule or practice of any Court or Courts, to the contrary notwithstanding;

* The *Appointment of Overseers' Act*, (printed *Leg. Obs.* vol. 37, p. 448,) obtained the Royal Assent on the 22nd March last; the *Out-door Paupers' Act*, (printed *ante*, p. 101,) on the 11th May; the *Distress for Rates' Act*, (printed *ante*, p. 127,) on the same day; the *Poor Relief (Cities and Boroughs') Act*, (printed *ante*, p. 250,) on the 28th July; the *Stock in Trade Assessment Act*, on the same day; and the *Poor Law Unions' Act*, on the 1st August.

and such notice of appeal shall be in writing, signed by the person or persons giving the same, or by his, her, or their attorney on his, her, or their behalf, and the grounds of appeal shall be specified in every such notice: Provided always, that it shall not be lawful for the appellant or appellants, on the trial of any such appeal, to go into or give evidence of any other ground of appeal besides those set forth in such notice."

The exception referred to in this section, however, is of such an extensive character, as greatly to diminish the utility of the rule, for we find it declared by the second section:

"That none of the provisions hereinbefore contained, relating to notices of appeal, shall be construed to affect or alter the law as to notice of appeal against a *summary conviction*, or against an *order of removal*, or against an order under any statute relating to *pauper lunatics*, or against an *order in bastardy*, or against any proceeding under or by virtue of any of the statutes relating to her *Majesty's Revenue* of Excise or Customs, Stamps, Taxes, or Post-office, but the law with regard to notices of all such appeals shall be deemed and taken to be the same as if the provisions hereinbefore contained had not been enacted."

In a matter obviously the subject of arbitrary regulation, it is, to say the least, unfortunate, that some rule could not be made applicable to every class of appeal, so far as regards the time for notice. The new act also contains some provisions for the encouragement of references to arbitration from the Quarter Sessions, which, considering how unsatisfactorily the practice of arbitration is found to work in the Superior Courts of Law, cannot be expected to obtain universal approval. The Quarter Sessions Procedure Act^b does not come into operation before the 1st day of November next, so that its provisions will not take effect until after the next Michaelmas Sessions, a suspension which, it must be admitted, is convenient and judicious.

The only measures directly affecting the Law of *Real Property*, passed during the Session, are the *Inclosure of Commons Act Extension*; the *Drainage of Lands Act*; the *Sequestrators' Remedies Act*, and the *Defective Powers of Leasing Act*,^c (printed *ante*, p. 187,) but the immediate operation of which last act has been postponed by the *Defects in Leases Suspension Act*, introduced expressly for this purpose.

The acts of the Session relating to the Criminal Law, are the *Larceny Acts Amendment*, which has been discussed as well as

printed in previous numbers, and the act for the *Protection of Women*, containing some provisions of a novel character. Perhaps under the head of criminal law should also be classed, the *Cruelty to Animals Prevention Act*.

The *Joint Stock Companies Amendment Act*, which obtained the Royal Assent on the last day of the Session, is sufficiently important to call for a distinct notice, and a similar observation is applicable to the *Trustees Relief Act*, which with the *Petty Bag Office*, and the *Lord's Costs Taxation Act*, completes the enumeration of the acts passed in the Session of 1849, in respect of which the legal profession may be considered peculiarly interested.

It seems to have been unanimously conceded that, at the close of the Session, bills were passed with a degree of haste and an absence of deliberation which renders it extremely probable that, in some instances, the work thus imperfectly done will have to be done over again. As already intimated, there is too much reason to fear that the Bankruptcy Consolidation Act must be comprehended in the category of measures on which much time has been unprofitably spent, although we by no means subscribe to the accuracy of the description which Vice-Chancellor Knight Bruce gives of it to the Commons Committee, when he states that, "so far as it is *not* objectionable, it is of very little importance indeed." It appears to us, with submission, to be a measure of no ordinary importance, and it is much to be lamented that the usual precautions were not taken to render it less objectionable and insure a fulfilment of the reasonable expectations entertained in regard to it by the commercial and trading community.

COUNTY COURTS.—RETURNS TO PARLIAMENT.

WE now proceed to state the results of the returns made to the House of Commons, and ordered to be printed on the 1st June, of the number of plaints entered in the County Courts,—the causes tried,—the sittings of the courts,—the monies received and paid from 1st June to 31st Dec. 1848, inclusive.

It appears from the returns, that there are 491 County Courts, and the number of plaints was 427,611, being something less, on the average, than a thousand for each court, or rather more than three plaints per diem, excluding Sundays.

^b Cited as the 12 & 13 Vict. c. 45.

^c 12 & 13 Vict. c. 26.

It is said, that of these 427,611 plaintiffs, no less than 259,118 were *tried*, or about 60 per cent. of the plaintiffs entered; but by "trial" we do not presume it is intended to say that there was an *actual defence* set up in each case, supported either by evidence or argument; but that these cases in some way or other came before the Judge. In the vast majority of instances, there was, doubtless, no shadow of defence, but the mere question was, when should the debt be paid, or by what instalments? The following is extracted from an "explanatory statement" given with the returns, which will show the "total of the whole" sought to be recovered, and the amount for which judgments were obtained:

"The total amount of the sums for which such plaintiffs were entered, was 1,346,802*l*.

"The total amount of the sums paid into Court, to the credit of plaintiffs by defendants, *before trial*, was 86,292*l*.

"The total amount of sums for which judgment was obtained in the 259,118 *causes tried*, was 752,543*l*.

"It may be considered that the total of the sums represented by the 259,118 plaintiffs, which proceeded to trial, was not less than 820,000*l*., as it will be seen at page 16, that a greater proportion of the plaintiffs entered for the larger sums are tried than those entered for the smaller, and the difference between 820,000*l*. and 752,543*l*. for which judgment was obtained, would be the amount of those causes in which the plaintiffs were nonsuited, or in which they claimed larger amounts than they obtained judgment for; this sum would be about 67,457*l*.

"Leaving the sum of 440,510*l*., of which the Court had no cognizance after the summonses for the same had been issued; but there is reason to believe that at least 80 per cent. of such sum was paid by the defendants to plaintiffs, or arrangements made between the parties."

The reasons are not stated for concluding that the plaintiffs recovered four-fifths of this sum, being nearly half a million of money, or one-third of the total amount.

Let us next see the enormous expense of the proceedings to recover the money in question, of which 86,262*l*. was paid into Court, and judgments obtained for 752,243*l*. The following is the "explanation":

"The total amount of costs adjudged to be paid by defendants, on the amount (752,543*l*.) for which judgment was obtained, was 199,980*l*., being an addition of 26.5 per cent. on the amount ordered to be paid. All the fees to counsel and attorneys, as well as the allowances to witnesses, are included in the sum of 199,980*l*. Witnesses' expenses amount to about 10 per cent., and those of counsel and

attorneys to about 7 per cent. of the said sum. The remainder is composed of the Court and officers' fees, which amount re-appears, and is included in the columns, showing the separate amount of the fees of each officer and the produce of the General Fee Fund.

The total amount of Officers' Fees £234,274
The total amount of the produce of
the General Fund 51,784

£286,058

"If there were not included in this sum the fees on executions, and the fees for paying of monies in and out of Court on judgments obtained prior to 1st January, 1848, the total amount of fees paid on the plaintiffs entered in the year would be nearly ascertainable. It will be seen, however, that the total amount of the fees (286,058*l*.) is equal to 21 per cent. on the total amount claimed, viz., 1,346,802*l*.

"Of the sum of 568,891*l*. shown to have been paid into Court to the credit of suitors, about 240,000*l*. would be in satisfaction of judgments made prior to the 1st January, 1848, for payment of the debts by instalments. The amount paid into the Sutors' Fund, therefore, is not dependent upon the business shown to have been done in the Return. In some cases, the order for the payment of a debt will extend over years.

"Supposing that this sum of 568,891*l*. was paid into Court by 10*s*. instalments, and was paid out in similar sums; the number of entries in the clerks' cash-books and ledgers would exceed 4,000,000*l*., but there is reason to believe that 10*s*. is too high an average for the payments into Court, though it may not be for the payments out.

"The total amount of fees received by the clerks amounts to 87,283*l*., very nearly as much as the sum taken on account of the judges' fees. This arises from the number of executions and payments into Court increasing with the age of the Court, which they will continue to do until the judgments for payment of debts by instalments are satisfied in the same proportion as new and similar judgments are made, which may be expected to be the case in about two years time, should the business of the Courts continue the same. The fees upon executions are receivable by the clerks and bailiffs, and those on payments into Court by the clerks only.

"The amount of clerks' fees, if divided by 491, the number of Courts, gives 180*l*. per Court; but it will be seen that there is a Court in Yorkshire, in which the gross amount of fees received by the clerk in the year appears to have been only 9*l*. 4*s*. 3*d*., and another in Wales where the amount was only 8*l*. 10*s*. There are many Courts, in which the clerks' fees do not exceed 30*l*. per annum, the amount of business in such Courts being of course trifling."

From the "summary" appended to the respective returns, we find that the "total

of the officers' fees" of 234,274*l.* is thus composed:—

	£.	s.	d.
"Judges' fees	87,661	16	8
Clerks	87,283	4	11
Bailiffs	59,329	6	0

£234,274 7 7

This is exclusive of the payments to the General Fund, amounting to 51,784 11 4

Making in all £286,058 18 11

It appears that the costs allowed, including the fees of counsel and attorneys, and payments to witnesses, amount to 26½ per cent. on the amount recovered. The poor suitors, therefore, whether plaintiffs or defendants, pay very enormously for this supposed *cheap* law. It seems also, that of the large sum of 199,980*l.* allowed for costs, the witnesses' expenses amount to 10 per cent., and the fees of counsel and attorneys to 7 per cent. only,—the remaining 83 per cent. going to the courts and their officers.

Our readers will compare the results with the former state of things in the Superior Courts, or rather with that state in which the suitors might have been, if the fees of office on small debts had been properly reduced. But the view which must hereafter be taken of the working of these courts will depend on the loss which *the public* sustains by the abandonment of claims on account of the trouble, inconvenience, and loss of time in *personally* attending the courts, compared with the mode of transacting business in the Superior Courts, through the medium of their professional agents.

NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

[The Statutes of this Session printed in the last and the present Volumes, are as follow:—

Buckingham Assizes, vol. 37, p. 408.

Inclosure of Commons, vol. 37, p. 408.

Appointment of Overseers of Poor, vol. 37, p. 448.

Law of Larceny Amendment, vol. 37, p. 471.

Annual Indemnity, vol. 37, p. 489.

Petty Sessions in Counties and Boroughs, p. 78, *ante*.

Maintenance of Poor out of Workhouses, p. 101, *ante*.

Costs of Distraining for Highway Rates, p. 127, *ante*.

Defective Powers of Leasing, p. 187.

Sheriff of Westmoreland, p. 230, *ante*.

Passenger Regulation, p. 269.

Relief of Poor in Cities and Boroughs, p. 269.]

SMALL DEBTS.

12 & 13 VICT. c. 101.

An Act to amend the Act for the more easy Recovery of Small Debts and Demands in England, and to abolish certain Inferior Courts of Record. [1st August, 1849.]

Reciting 9 & 10 Vict. c. 95, and that it is inexpedient that persons should be committed under the said act to Houses of Correction: Be it therefore enacted,

1. *Prisons for persons committed for fraud, &c.*—That from and after August 31, 1849, so much of the said act as authorizes any judge to order any party or defendant to be committed as therein mentioned shall be repealed; and it shall be lawful for any judge who would have been authorized under the said act to order any party or defendant to be committed as aforesaid for any such period as aforesaid, to order such party or defendant to be committed for the like period to the common gaol wherein the debtors under judgment and in execution of the Superior Courts of Justice may be confined for the county, city, borough, or place in which such party or defendant is resident, or to any other gaol or debtors' prison for the same county, city, or borough, or place which shall by any declaration of one of her Majesty's principal Secretaries of State be allowed as a place of imprisonment for persons committed under the said act, so long as such declaration shall remain in force and unrevoked, or to any prison which has been or shall be provided as in the said act mentioned as the prison of the Court by the judge of which such order may be made; and all the provisions of the said act applicable to and consequent upon the order for commitment under the power herein-before repealed, and to the prisons to which persons might be committed under such order, shall apply to and be construed with reference to any order made under the power herein-before contained, and the prisons to which persons may be committed under such order.

2. *Prisons for contempt.*—That from and after August 31, 1849, in any case in which any judge would under 9 & 10 Vict. c. 95, have been authorized to commit any such offender to any such prison as therein mentioned for such period as therein mentioned, such judge shall be empowered, if he think fit, by warrant, as therein mentioned, to commit such offender for the like period to any common gaol wherein the debtors under judgment and in execution of the Superior Courts of Justice may be confined, for any county, city, borough, or place wholly or in part within any district of such judge, or to any other gaol or debtors' prison for any such county, city, borough, or place which shall by declaration as aforesaid be allowed as a place of imprisonment for persons committed under the said act, so long as such declaration shall remain in force and unrevoked, or to any prison which has been or may be provided, as in the said act mentioned, as the

prison of the Court by the judge of which such offender shall be committed.

3. Where *debtors' prison* is situated at an inconvenient distance or crowded, Secretary of State may authorize commitment to House of Correction..

4. *Gaols* maintained by Lords of Liberties and private persons not to be used without their consent.

5. Reciting 9 & 10 Vict. c. 95; 5 & 6 Vict. c. 98.. A prison used under recited enactment for any riding, parts, or division of a county, to be deemed a *common gaol* for such riding, parts, or division.

6. *Power to alter fees payable on proceedings.*—That it shall be lawful for one of her Majesty's Secretaries of State, with the consent of the Commissioners of her Majesty's Treasury, from time to time to regulate or vary, lessen or increase, the fees or sums in the name of fees now payable, or which from time to time may be payable, on the several proceedings in the Courts holden under the said act of the 10th year of her Majesty to the judges, clerks, and high bailiffs of such Courts, and such fees or sums may be so regulated from time to time by way of per-centage on the amount of the demand; and such Secretary of State, with such consent as aforesaid, may from time to time appoint, instead of all or any of the fees or sums in the name of fees now payable or which may from time to time be payable as aforesaid, other fees or sums by way of per-centage or otherwise, and to be payable on such proceedings under such last-mentioned act as such Secretary of State with such consent as aforesaid may direct.

7. So much of recited act 9 & 10 Vict. c. 95, as directs clerk to pay over monies to *treasurer* repealed. Clerk to pay over his balance as the *treasury* may direct.*

8. So much of 9 & 10 Vict. c. 95, as enacts that clerks shall make all necessary contracts, &c., repealed. *The treasury* to provide for the several purposes, and defray the expenses.

9. Providing for payment of the expenses incurred under the 10 & 11 Vict. c. 102; and for applying the surplus of general fund of any Court to expenses of any other Courts where such fund is deficient.

10. *Bailiffs acting as brokers.*—That it shall be lawful for the judge of any Court holden under the said act of the 10th year of her Majesty, by any writing under his hand, to authorize any of the bailiffs appointed by the high bailiff under the said act to act as brokers or appraisers for the purpose of selling or valuing any goods, chattels, or effects taken in execution under the said act; and the bailiffs so authorized by the judge may, without other licence in this behalf, do and perform all the duties, and shall be entitled to the poundage which sworn brokers and appraisers may now

do and perform, and are entitled to under the said act.^b

11. So much of 9 & 10 Vict. c. 95, as requires notice of her Majesty's intention to make Order in Council repealed.

12. *General rules to be approved by judges of the Superior Courts.*—That it shall be lawful for the Lord Chancellor to appoint and authorize five of the judges of the Courts holden under the said act of the tenth year of her Majesty to frame such general rules and orders as to them shall seem expedient for and concerning the *practice and proceedings of the Courts* holden under the said act, and for the execution of the process of such Courts, and in relation to any of the provisions of the said act as to which there may have arisen doubts or have been conflicting decisions in the said Courts; and all such rules and orders as aforesaid as shall be certified to the Lord Chancellor, under the hands of the judges so appointed or authorized, or any three of them, shall be submitted by the Lord Chancellor to three or more of the judges of the Superior Courts of Common Law at Westminster, of whom the Chief Justice of the Court of Queen's Bench or Common Pleas or the Chief Baron of the Court of Exchequer shall be one; and such judges of the Superior Courts may approve or disallow, or alter or amend, such rules and orders, or any of them; and such of the rules as shall be so approved by such judges of the Superior Courts shall forthwith after the approval thereof be laid before both Houses of Parliament, if parliament be then sitting, or if parliament be not sitting, then within five days after the next meeting thereof; and no such rule or order shall have effect until six weeks after the same shall have been so laid before both Houses of Parliament; and any rule or order so approved shall from and after the expiration of such time as last aforesaid be of the same force and effect as if the same had been enacted by authority of parliament.^c

13. *Abolition of Palace Court, &c.*—And whereas it is expedient to abolish the Court of the Marshalsea of Household of the Kings of England, and the Court of our Lady the Queen of the Palace of the Queen at Westminster, and her Majesty's Court of Record for the Honour of Peveril and additional limits of the same: Be it enacted, That from and after the passing of this act no action or suit shall be commenced in any of the said Courts.

14. *Powers of Marshalsea and Palace and Peveril Courts to cease on 31st December, 1849.*—That from and after 31st December, 1849, all the power, authority, and jurisdiction of the said Court of the Marshalsea, and of

^a This seems to be a proper measure of economy; for if the bailiffs are thus remunerated, the service of process may be transferred to the clerks of attorneys.

^b Under this clause it may be hoped that some improvements will be effected for the relief of the suitors, and the convenience of those who practice in these Courts.

* This clause indicates the intention of abolishing the Office of Treasurer of the County Courts.

the said Court of the Palace of the Queen at Westminster, and of the said Court for the Honour of Peveril and additional limits of the same, and of the Judges of the said Courts respectively, shall cease and determine, and that all actions and suits then depending in the said Courts respectively shall be transferred, with all the proceedings thereon, to her Majesty's Court of Common Pleas at Westminster, if the debt or damages sought to be recovered in such actions or suits respectively shall exceed the sum of 20*l.*, and to the County Court for the District in which the respective defendants shall then reside, if the debt or damages sought to be recovered in such actions or suits respectively shall not exceed the sum of 20*l.*; and such actions and suits so transferred shall be dealt with and decided according to the practice of those Courts respectively, or of the Court whence the same shall be transferred, according to the discretion of the Court to which the same shall be transferred, which Court shall, for the purpose of such actions or suits only, be deemed and taken to have all the power and jurisdiction to all intents and purposes possessed before the passing of this act by the Court whence such action or suit shall be transferred.

15. That all judgments obtained in any of the Courts hereby abolished on or before 31st December, 1849, shall, notwithstanding the passing of this act, be as valid and effectual, and as capable of being enforced by the process of the Court in which such judgments shall respectively have been obtained, as if this act had not been passed.

16. Records of abolished Courts to be placed under the charge of Master of the Rolls under 1 & 2 Vict. c. 94.

17. *Compensation.*—That every person who is legally entitled to any franchise or office in any of the Courts abolished by this act shall be entitled to make a claim for compensation to the Commissioners of her Majesty's Treasury within six calendar months after the passing of this act, and it shall be lawful for the said Commissioners, in such manner as they shall think fit, to inquire what was the nature of the office, and what was the tenure thereof, and what were the lawful fees and emoluments in respect of which such compensation should be allowed; but any increase of such fees or emoluments which shall have happened after the passing of the said act of the tenth year of her Majesty shall not be taken into account in estimating the amount of such compensation; and the Commissioners in each case shall award such gross or yearly sum, and for such time as they shall think just, to be awarded, upon consideration of the special circumstances of each case; and all such compensations shall be paid out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland: Provided always, that if any person holding any office in any of the said Courts shall be appointed after the passing of this act to any public office or employment, the payment of the compensation awarded to him

under this act, so long as he shall continue to receive the salary or emoluments of such office or employment, shall be suspended, if the amount of such salary or emoluments be greater than the amount of such compensation, or, if not, shall be diminished by the amount of such salary or emoluments.

18. *Attorneys and solicitors not exempt.*—That no privilege shall be allowed to any attorney, solicitor, or other person, to exempt him from the provisions of this act or the said Act for the more easy Recovery of Small Debts and Demands in England.^a

^a The ancient privilege of attorneys of suing in their own Courts is thus abolished, so far as relates to the jurisdiction of these new Courts; but no relief is given to them for their losses, either of emolument, or office.

THE LAW OF TITHES.—CONSTRUCTION OF LORD TENTERDEN'S ACT.

Salkeld v. Johnston.

THE LORD CHANCELLOR'S JUDGMENT.

THE Lord Chancellor delivered his judgment in this important cause, on the 2nd Aug., to the following effect:—

"Vice-Chancellor Wigram decreed payment of certain tithes against the defendants, who had pleaded the statute 2 & 3 Wm. 4, c. 100, and proved nonpayment of the particular tithes claimed, within the period required by the act; holding that such nonpayment was no protection under the act without proof of the legal origin of the discharge.

"Lord Lyndhurst, upon an appeal from that decree, directed a case for the opinion of the Judges of the Common Pleas—they were equally divided, Chief Justice Tindal and Mr. Justice Cresswell agreeing with Vice-Chancellor Wigram; Justices Erle and Coltman holding that the defence under the act was complete. Upon this certificate the case came before me, and finding the Judges of the Common Pleas equally divided; and that upon the same question coming before the Queen's Bench, in *Fallows v. Clay*, 4 Q. B. 313, the judges of that Court were also equally divided, Lord Denman and Mr. Justice John Williams concurring with Justices Erle and Coltman; and Justices Patteson and Coleridge with the Chief Justice and Mr. Justice Cresswell; I directed that the same case should be submitted to the Court of Exchequer, and upon this point the Chief Baron and Barons Parke, Alderson and Platt, have certified their concurrence with the opinion of Justices Erle and Coltman. The result, therefore is, that of the 12 judges who have given opinions upon this point, eight differ from that of Vice-Chancellor Wigram, and four concur with him.

"It is now my duty to come to the best conclusion I can upon a question of which the difficulty is best proved by the diversity of opinion amongst the judges. The question must depend upon the construction of the act,

but it is not only a legitimate but a proper course first to consider the position at the time it passed of the subject-matter upon which it was intended to operate. This subject-matter is by the act described to be "Prescriptions and claims of or for any *modus decimandi*, or of or for any exemption from or discharge of tithes by composition, real, or otherwise," treating the *modus* and the discharge as one and the same for the purposes of the act, and providing the same remedy for each. This I think an important consideration, because some of the learned judges who support the plaintiff's right to the tithes found their arguments very much upon the supposed distinction between the rules of law as applicable to *moduses* and discharges, and, no doubt, different rules have been applied to compositions real, the reason for which is not very apparent, but the foundation of the right of the occupier is the same in all, as in former times it was competent for the parties interested to agree to the payment of a *modus* in lieu of tithes in kind. Proof of immemorial payment of such *modus* and nonpayment of tithes in kind, was a sufficient defence against the claim for tithes upon the ground the prescription is held to be proof of a grant or arrangement about property which the parties were competent to enter into; but the immemorial payment was only evidence of the agreement, that being the foundation of the right claimed. In the ordinary case of a discharge claimed, upon the ground of the lands having belonged to one of the greater monasteries dissolved by Henry 8th, the principle will be found to be the same. Those monasteries were capable of holding their lands discharged from tithes—they were not necessarily so discharged, but the establishment was competent to hold them discharged. When, therefore, it appeared that no tithes had ever been paid by them a discharge was presumed, as it might have had a legal foundation. Here, again, the non-render of tithes was only available as evidence of the supposed arrangement of the religious house upon which the discharge at the present time rested. I am considering the case as if the religious houses had continued to this time and were in possession of the land, the statute Henry 8th having only given to the lay proprietors the same right which the religious houses had before enjoyed. In both these cases immemorial usage was necessary to establish the right claimed, the foundation of which could not be proved; but in fact such usage was in ordinary cases assumed upon proof of comparatively modern practice, but in both it was competent for the party claiming the tithe to meet such presumptive proof for the purpose of showing that the conclusions to which it tended could not be well-founded, and that in fact there was not a legal foundation for the discharge claimed. In the case of a discharge by composition real, these principles were not strictly followed, nor indeed the rules which regulate all other cases of prescription. Up to the disabling statutes in the

reign of Elizabeth, it was competent for the tithe-owner and the land-owner to enter into a composition real, with the concurrence of other requisite parties; it might therefore have been expected that the enjoyment of the land without any render of tithes from time immemorial would be received as evidence of an arrangement between parties who were at the time competent to enter into it; but such was not the course adopted, but the party setting up the composition real was required to produce the deed by which it was effected, or some evidence of its having been executed. This Mr. Justice Erle properly describes as an anomaly, and it was so manifestly unjust that the Courts at last only required slight evidence of its having existed, specifically referring to the fact. In this case the difficulty was therefore greater than in the former, for not only had the occupier to prove the immemorial non-render of the tithes, but also to give some evidence of the legal origin of his claim of discharge, and, as in other cases, to meet any evidence his adversary might produce tending to negative the foundation of his title.

"Such was the state of the law and such the difficulty which persons holding land legally discharged from the payment of tithe in kind had to contend with when compelled to defend such legal right, when Lord Tenterden's Act passed, by the 1st section of which it is enacted, that all prescriptions and claims of or for any *modus decimandi*, or for or to any exemption from or discharge of tithes by composition, real or otherwise, in cases of claims by laymen other than corporation sole, shall be sustained and be deemed good and valid in law upon evidence showing in cases of claims of a *modus decimandi* the payment or render of such *modus*, and in cases of claim to exemption or discharge showing the enjoyment of the lands without payment or render of tithes, money, or other matter in lieu thereof, for the full period of 30 years next before the time of such demand, unless it should be proved that such render or payment had been made prior to such 30 years; and if such proof in support of the claim should be extended to the full period of 60 years next before the time of such demand, in such cases the claim was to be deemed absolute and indefeasible, unless in either case such non-render and non-payment should have been under a consent or agreement in writing; and when the demand was made by any corporation sole, every such prescription or claim was to be valid and indefeasible upon evidence showing the payment of the *modus* or the enjoyment of the discharge for the periods therein specified. Such being the enactment, the defendant has set up a prescription and claim to an exemption from, and discharge of, tithes of certain matters and things, and he has proved the enjoyment of his land without payment or render of such tithes, or of money or other matter in lieu thereof, for the full period required by the act; upon which proof the act declares that such prescription and claim shall be sustained and held good

and valid in law and shall be absolute and indefeasible, but the decree of the Vice-Chancellor has held such proof to be of no value or validity, and has decreed the payment of tithes notwithstanding such proof. I cannot find any ambiguity in this enactment, or any flexible expression capable of different meanings. If, therefore, other parts of the act led to the belief that such was not the real intention of the act, I do not see how it could be possible to control so positive an enactment; but I am of opinion that all the other parts of the act confirm the natural meaning of the words, and that the construction put upon it by the decree would deprive it of nearly all its value, and render it all but inoperative. The 7th section enacts, that in all suits and actions it shall be sufficient to allege that the modus or exemption or discharge claimed was actually exercised and enjoyed for the period mentioned; and if the other party shall intend to rely upon any matter of fact or law not inconsistent with the simple fact of the exercise and enjoyment of the matter claimed, the same shall be specially alleged. The act says, that the allegation of enjoyment of the right claimed during the period prescribed shall be sufficient answer to the action or suit: can it then be contended that such allegation affords no defence, but that in order to meet the demand much more must be alleged and proved, namely, the facts necessary before the fact to show the legal origin of the exemption. That nothing more need be alleged than the simple fact of the exercise and enjoyment of the discharge claimed is positively enacted by this 7th section; was it then intended that the defendant should go into evidence and prove what he was not required to plead or to put in issue? If the plaintiff had anything to allege, why the defence should not prevail, he was required to allege it specially, and was not to be at liberty to give any evidence of it, or any general traverse or denial of the matter claimed. If the defendant was bound to prove more than the enjoyment pleaded, the plaintiff, not having specially alleged any matter, is prohibited from going into any evidence to meet such further proof, showing that without any such special allegation the whole contest between the parties was to be confined to the simple fact of the exercise and enjoyment of the matters claimed. If then nothing need be pleaded but the exercise and enjoyment of the discharge claimed for the stipulated period, and such exercise and enjoyment is by the act declared to be valid, absolute, and indefeasible, it is not easy to conceive any reason why the defendant, having so pleaded and proved all that the act requires, nothing being alleged to the contrary by the plaintiff, is not to have the protection of the act; but so some of the most able judges at law and in Equity have thought, and their opinions being entitled to the greatest respect, the grounds upon which they are founded must be carefully examined. Vice-Chancellor Wigram rests his opinion principally upon the

premise of the act, which recites that the object was to shorten the time required for the valid establishment of claims of modus or exemption; and, considering that before the act several things were required besides length of time, such as in the two principal grounds of exemption—possession by one of the greater monasteries, and in the case of a composition real, the fact of a deed for that purpose having been executed, holds that these matters must still be proved, but being proved the time required by the act shall be sufficient. The first answer to this argument is, that time as such never was requisite for these grounds of discharge. It was only available as a means of proving such things as were requisite, as in the case of abbey lands, that the lands in question had belonged to one of the greater monasteries, and that such monastery held them discharged of tithes, in which case the act of Henry 8th gave to the lay proprietor a right to the same defence, but for this purpose it was necessary to show the history of the property 300 years ago; not only as to the possession by the abbey, but that the lands were held by it discharged from tithes. If all this were capable of direct proof, no question would arise upon the lapse of time; so in the case of a discharge by composition real, if the deed be produced with all proper parties, time would be immaterial; but at this period such direct proof cannot in ordinary cases be produced; practically, therefore, the cases are found to depend upon the inference arising from length of time. The fact of nonpayment within even modern times was considered sufficient proof of a title to a discharge by the abbey, and nonpayment coupled with slight evidence of a deed having existed, was sufficient to establish a composition real, and in cases of modus the nonpayment of tithes and the payment of the substituted duty was sufficient to establish the fact of an agreement at the time at which it could have been legally entered into; but in all these cases time was only the medium of proof, and was liable to be repelled, and the inferences from it were liable to be refuted by any positive evidence inconsistent with such inferences; when such attempts were made it became necessary to enter into an investigation of proofs of a date so remote as to preclude the hope in many cases of coming to any certainty or satisfactory conclusion, and in all cases leading to great expense.

"The preamble is therefore obviously inaccurate in speaking of shortening the time required for the valid establishment of claim of modus and discharge, none being required; but it appears to me so mean that the expense and inconvenience of suits for tithes ought to be prevented, by establishing a certain limitation of times for those purposes after which claims of moduses and discharges should not be questioned. It was also said, that the act uses the technical terms *modus* and *discharge*; but as the law knows no *modus* or *discharge* except connected with circumstances necessary to give

then validity, the act can only be held as referring to such moduses and discharges as would have been valid before the act. It would perhaps be a sufficient answer to this argument that the act does not profess to deal with moduses and discharges, *but with claims to moduses and discharges*;^a and it is evident that if this construction should prevail, the act, instead of being a protection to the occupier, would in many cases be prejudicial to him. Under the law, as it was applied in practice before the act, a comparatively short modern usage of nonpayment, not met by any contrary evidence, was sufficient proof of immemorial nonpayment and of all the inferences arising from it; whereas, under this construction of the act it might be necessary to extend such proof to 60 years, or to two incumbrances and three years of a third, which might embrace an entire century. The Vice-Chancellor says, that the act only professes to aid the proof of a modus, and not to make good a modus which before the act was invalid. Suppose a payment claimed as a modus proved to have been paid during the period required by the act, could the plaintiff be permitted to show that such payment could not have had a legal origin by reason of its rankness? If such proof could be made, and it was to be admitted, the whole object of the act as to moduses would be defeated; and if it could not be admitted, then the act has made good a modus, which before the act was invalid.

"The opinion of Lord Chief Justice Tindal and Mr. Justice Cresswell are founded upon the same grounds, assuming that before the act time constituted the essence of a valid modus, and was one only of the essential grounds of a discharge, and that the act intended to deal with one essential only, namely, time, and to leave the other untouched,—a supposition contrary to the expressed terms of the act, and inconsistent with the legal state of the interests upon which it was to operate. It seems, indeed, to be admitted, that in cases of modus, enjoyment for the time prescribed supercedes the necessity of any other proof, and why not as to claims to discharges? One sentence embraces both,—*suppose the words by composition real or otherwise, had been omitted*, and the enactment had been that all claims to discharges of tithes should be deemed good and valid in law, and absolute and indefeasible upon proof of enjoyment for the prescribed time, and that nothing but such enjoyment need be pleaded; could it be contended that the particular ground of discharge must be pleaded and proved, and its legal validity established; and if so, how much of such legal validity need be proved: certainly not what was before necessary,

because the discharge from tithes in the hands of the tithesee at the time of the enactment,—an essential part of the title to the claim before proved by immemorial nonpayment—need no longer be so proved: the words "by composition real," are introduced by way of example only, and the subsequent words "or otherwise," render them useless, the whole being tantamount to an enumeration of every possible ground of discharge, which would be equivalent to the simple words, 'all claims to discharge from tithes.' Upon this principal point, with all respect and deference to the opinions of the very eminent judges who have thought otherwise, I do not hesitate to concur with the great majority who think, that under the act the simple fact of enjoyment of the discharge claimed, for the prescribed time is all that need be pleaded and proved as an answer to a demand for tithes.

"Another point has been raised by Vice-Chancellor Wigram, and glanced at by Chief Justice Tindal and Mr. Justice Cresswell, and adopted by the Chief and other Barons, and for which, therefore, there is a much greater balance of authority than upon the other point in support of the decree, although Chief Justice Tindal and Mr. Justice Cresswell abstained from giving any opinion on it, and the Chief and other Barons state it to be a question of great difficulty. The question is, whether the act applies to cases in which the claim is not for a discharge from all tithes of the lands in question, but of some of such tithes only. The fact that tithes had been paid for other matter produced upon the lands in question, is not alleged, or put in issue in the pleadings, but the bill claiming tithes only of certain titheable matters and things; the answer meeting the claim made, says, that no tithes, &c. have been paid for the said titheable matters and things during the period specified in the act; the case sent for the opinion of the judges of the Common Pleas, notwithstanding the suggestion of Vice-Chancellor Wigram, was in conformity with this state of the case upon the pleadings,^b and the question put was, whether under the act the discharge claimed could be maintained under the circumstances before mentioned. That the claim was for a discharge of the tithes of certain

^a The 2nd section, however, expressly enacts, that no exemption or discharge shall be claimed to be within the provisions of the act, unless such exemption or discharge shall be proved to have existed and been acted upon at the time of, or within one year next before, the passing of the act.

^b The case sent by Lord Lyndhurst to the Common Pleas stated:—"The plaintiff and his predecessors, vicars of the said parish of Crosby-upon-Eden, have always received the tithes in kind, or moduses, or compositions for the tithes of hay, with certain exceptions, and of milk, calves, wool, lambs, foals, bees, pigs, geese and eggs, and line tithes of gardens, orchard, and hemp, have not been paid in the parish." The case also contains the following statement:—"It is to be assumed that the plaintiff is entitled to the tithes of the titheable matters and things, the tithes whereof are demanded by his bill from the defendant's respective lands, unless, under the circumstances mentioned in this case, such lands are exempt from or discharged of such tithes."

specified matters, and not for all tithes produced upon the lands in question, was open for consideration under this case, but not the fact that tithes had been paid for other matters; but the opinion of the judges did not turn upon that point, Chief Justice Tindal and Mr. Justice Creswell only alluding to it, but not giving any opinion upon the question, and Justices Coltman and Erle abstaining from any observations upon it. When the same case was argued before the Barons of the Exchequer, they must have been of opinion, that upon the case so stated the question did not arise, for they suggested that the case should be altered, in order to raise it, and accordingly the defendant, I presume, consented to an insertion in the case of a statement, that the tithes of other matters produced upon the same land had been paid. This was, perhaps, an improvident consent on the part of the defendant, because, if the answer properly pleaded the defence under the act, and the plaintiff intended to rely upon the fact of other matters from the same land having paid tithes, he ought, it would seem, under the 7th section, to have alleged such matter specially, which he did not do. This improvidence will not, however, affect my judgment upon the appeal, because, I must dispose of the case as it appears upon the pleadings. In one respect, indeed, the defendant has an advantage from the alteration made in the case, as it may be assumed, that in the opinion of the learned Barons the point was not open to the plaintiff. I cannot consider it as a fact, that tithes were paid for other matters from the same lands; but the point suggested by the Vice-Chancellor Wigram, that the discharge is claimed in respect of certain matters only, and those in fact of modern introduction, is clearly open to the plaintiff and calls for my decision. Upon this two questions arise; first, Does the act apply to claims of discharge of some only of the titheable matters? Secondly, If it does not, can the plaintiff upon the pleadings avail himself of that point?

Vice-Chancellor Wigram, in discussing this part of the case, relies much upon the fact, that some of the matters for the tithes of which the discharge is claimed, were not known until after the time of legal memory; and after adverting to the law, that a modus for such matter might, nevertheless, be good, says, that a contract before the time of legal memory not to pay tithes of titheable matters then unknown and thereafter to be introduced, would be merely void for want of consideration. If this be so, would it not follow that there could not be any discharge for tithes of matters not known before the time of legal memory; that is, no general discharge for all titheable matter. All such discharges are founded upon contracts though not now capable of proof or specific exemption. The consideration for a modus differs only from the consideration for a discharge—because it is a remaining and continuing consideration; and if it may be good for articles recently introduced, so may the discharge;—the one case assumes a contract that the land

should be free from all tithes in consideration of the modus; and the other, that it shall be free from all tithes under the arrangement made or by virtue of some specific exemption. The principle of the rule as to produce, subsequently introduced, is equally applicable to both. Then the words of the act, coupling moduses and discharges in the same sentence enacts, that every claim of modus or discharge shall be held to be valid, absolute and indefeasible after the enjoyment specified. I think, therefore, that there is no foundation for the observation made as to some of the matters being of modern introduction; some of them indeed are as old as the land itself, such as grass not made into hay; but still the defence applies only to certain matters, so that if the act applies only to lands for which no tithes whatever have been paid, the defence may not be supported by the act. Upon this point the Barons of the Exchequer, and the Chief Justice Tindal, and Mr. Justice Creswell, rely upon the words of the act, which requires the occupiers to show the enjoyment of the land without payment, or render of tithes, money, or other matters in lieu thereof for the period specified, which they conceive, means without payment or render of any tithes, as well of matters as to which no discharge is claimed as of the matter in respect of which the discharge is claimed. I cannot think this the proper construction of the terms used, or the true meaning of tithes, as used in the act. It is not disputed that there may be a valid discharge as well as a valid modus for any particular description of titheable matter, or as well as for all the tithes of the land; when, therefore, the act speaks of "all claims of or to any exemption from or discharge of tithes," it must apply to and include all partial and particular as well as general discharges; but if in the same clause the same word is several times used, the fair and true construction is to attach to it the same meaning wherever it occurs. The act, then, dealing with partial and particular as well as general discharges, provides, that in cases in which render of tithes in kind shall be hereafter demanded, meaning a demand of tithes of particular matters as well as of all matters, the claim of discharge shall be held to be good and valid in law, and absolute and indefeasible upon evidence, showing the enjoyment of the land without payment or render of tithes, money, or other matter in lieu thereof for the prescribed periods. This payment or render of tithes is obviously the same as that before spoken of, namely, the tithes demanded, just as much as if the word *such* had preceded the word *tithes*.—If payment or render of any tithes was to negative the discharge as to all others, the word "any" would be necessary to precede the word *tithes*, but the word cannot be implied, there being no antecedent to support it. The act makes the defence applicable to all claims of discharge, but the construction would confine it to claims for total discharge of all tithes. The 7th section provides, that it shall be sufficient to allege that the discharge claimed was actually exercised and enjoyed during the

required period. In the case supposed, the discharge claimed was for the tithe of particular articles only, but by the construction contended for the allegation must be not only of the exercise and enjoyment of the discharge claimed, but of a total discharge. Taking therefore the very words as they stand, I should not hesitate to consider the tithes not rendered or paid identical with the tithes demanded; but had there been doubt as to the meaning of the words, the extraordinary consequences which would follow from the construction contended for would justify some violence being done to the ordinary meaning to avoid them; all claims to discharges for tithes of particular matters would be taken out of the operation of the act, and for what reason—if lands might be legally discharged from the tithes of the particular matters, though liable to tithes in kind for others, why was the new law not to be applicable to such cases? Were not suits in such cases productive of the expense and inconvenience which the act intended to prevent, and if within the mischief, why are they not within the remedy? And why, when the act provides a defence in all cases of claims of or to any exemption from or discharge of tithes, is it to be held that no such defence shall be available, except in cases in which the discharge claimed is for the tithes of all matters? The terms used in the act, and the provision it contains, and its unquestionable object, appeared to me to negative the construction contended for. *Vice-Chancellor Wigram distinctly raised this point, but in the case sent by Lord Lyndhurst to the Common Pleas there were not any facts stated to raise it; and when the case came before me, notwithstanding the observations of Chief Justice Tindal and Mr. Justice Cresswell upon this point, the counsel were contented to go to the Exchequer upon the same case. It was at the suggestion of the Barons that the alteration was made. Had this been otherwise upon the construction of this part of the act, I should have found great difficulty in giving to the plaintiff in this cause the benefit of the construction contended for. The defendant has strictly followed the directions of the 7th section, in stating his grounds for a discharge from the tithes claimed. If the plaintiff meant to rely upon any matter of fact or law in answer to such defence, he ought under that section to have alleged it specially; but the fact of payment of other tithes is not alleged or put in issue, and no evidence is to be received of it if not so specially alleged. Having given to this case the most careful consideration which its importance and the diversity of opinion amongst the Judges called for, I am of opinion that the defendant is, under the circumstances, entitled to the benefit of the act, and that the plaintiff's bill ought at the hearing to have been dismissed with costs. I therefore substitute an order for that purpose in the place of the decree of Vice-Chancellor Wigram."*^a

THE SCRIVENERS OF THE CITY OF LONDON.

SOME of our readers unite the several professions of attorney and notary public, and some of proctor and notary; and it may not be uninteresting to others, as well as themselves, to peruse the following account from "the books" of the ancient business of scrivener and the oath which they still take on admission to the freedom of this company in the city of London.

Lord Chief Justice Gibbs, in the case of *Adams v. Malkin*, 3 Camp. 534, thus speaks of the scriveners:

" 'There is some difficulty,' said his lordship, 'at the present day, in understanding correctly what a money scrivener is. There is no living character to refer to as an example. The business of a money scrivener, as it was formerly carried on, has been discontinued; it has been subdivided into different branches, which have been taken up by different descriptions of persons. Formerly the business was well known. The old books are full of cases arising out of the transactions of money scriveners: to these we must look, to form an accurate judgment of the character intended by the legislature.' "

" 'It appears from the old cases that, before bankers and brokers were so easy to be found, the scrivener was the person with whom people were accustomed to deposit their money, in order that he might lay it out for them when he could find a proper opportunity. The scrivener in the mean time had the use of it, and could not be questioned for the profit he made of it till he laid it out; he was trusted as a banker. It was not a specific sum which in monies numbered he was to keep in his chest; he gave credit for it to the party, who had sufficient confidence in him that he would lay it out to advantage as soon as an opportunity offered.' "

" 'Since the period thus referred to, the business of a money scrivener has ceased. It is related in the life of *Dr. Johnson*, that a person who went by the name of *Jack Ellis* was the last of the profession. He was a contemporary of *Johnson*, and is mentioned by him with great respect.' "

"His lordship then proceeds to consider the relative character of a scrivener and attorney. 'At the present day,' he observes, 'the banker occupies one department of the business of the scrivener, by being the depository of the

sent on appeal from the Vice-Chancellor's decree by Lord Lyndhurst to the Court of Common Pleas, 2 Com. Bench, 749, and the case as amended in the Exchequer, 2 Exch. Rep. 256.

^a The cause as decided by Vice-Chancellor Wigram, is reported 1 Hare, 196; the case

money; and the attorney, on the other, by drawing the securities.

Lord Campbell, in his *Nisi Prius* Reports, from which these extracts have been made, shows in one of his notes on this case, that taste for literary anecdotes by which he has been so much distinguished in his "*Lives of the Chancellors*." He thus quotes from Johnson and Boswell:

Johnson. "It is wonderful, Sir, what is to be found in London. The most literary conversation that I ever enjoyed was at the table of Jack Ellis, a money scrivener behind the Royal Exchange, with whom I at one period used to dine generally once a week."

Note by Boswell.—"This Mr. Ellis was, I believe, the last of that profession called scriveners, which is one of the London companies, but of which the business is no longer carried on separately, but is transacted by attorneys and others. He was a man of literature and talents."

It is evident from the following oath, taken by the members of the Scriveners' Company, that their business was anciently to prepare charters, deeds, and writings, "touching inheritance of lands and estates for life or years."

"I, N. D., do swear upon the *Holy Evangelists*, to be true and faithful unto our Sovereign Lord the King, his Heirs and Successors, Kings and Queens of England, and to be true and just in mine Office and Science, and to do my Diligence that all the Deeds which I shall make to be sealed shall be well and truly done, after my Learning, Skill, and Science, and shall be duly and advisedly read over and examined before the en sealing thereof; and especially I shall not write, nor suffer to be written by any of mine, to my Power or Knowledge, any Deed or Writing to be sealed, wherein any Deceit or Falsehood shall be conceived, or in my Conscience suspected to lie, nor any Deed bearing Date of long Time past before the en sealing thereof, nor bearing any Date of any time to come; neither shall I testify, nor suffer any of mine to testify, to my Power or Knowledge, any Blank Charter or Deed, sealed before the full Writing thereof; and neither for Haste nor for Covetousness, I shall take upon me to make any Deed, touching Inheritance of Lands, or Estate for Life or Years, nor any Deed of great Charge, whereof I have not Gunning, without good Advice and Information of Council; and all the good Rules and Ordinances of the Society of Scriveners of the City of London, I shall well and truly keep and observe to my Power, so far as God shall give me Grace. So help me God, and the Holy Contents of this Book."

STATUS OF ATTORNEYS.

Our first correspondent on this subject, "*An Attorney*," has sent us his rejoinder to the several letters which have appeared in opposition to his opinions. We are glad to observe, as we expected, that he has set himself right with each of his opponents as appropriated to themselves some expressions intended for others. The discussion will now proceed without further personal altercation.

Besides the opinions of several London solicitors, we have been favoured with communications from different parts of the country, but are desirous of hearing from solicitors in some more of the larger towns, whose extensive experience will enable them to give valuable information upon the points in question, namely, First,—the extent of the disesteem in which the profession of an attorney is held by the public. Secondly,—the causes thereof; and, thirdly, the remedies.

Whatever may be the difference of opinion as to the extent and causes of the evil complained of, there can be no doubt that several of the remedies recommended by "*An Attorney*," will be highly beneficial,—particularly the extension of general and classical education *before*, and fair and honourable practice *after*, admission into the profession. These are the means by which the public will be convinced that the practitioners of the law are gentlemen, as well in feeling and conduct as by Act of Parliament.

To the Editor of the *Legal Observer*.

SIR,—When I wrote my first letter to you I did so without supposing that it would have been published. I thought I would give you the hint for a few observations on a subject which much interested me, namely, the Status of Attorneys. I am sorry that I used the word "scamps," although such a term was applied to the ill-educated paid-articled clerk. I admit that it would have been better if I had used milder terms, but conveying the same meaning.

I have perused the letters of "A. Z.," and of "A Paid Articled Clerk," with much pain, particularly the letter of the latter person; they are both sharp gentlemen in their way, but if I had desired a convincing proof of ungentlemanly manner from the class to which they belong, I should not have wished for a better. I must, however, make a slight exception in favour of your correspondent A. Z. If he adopts the advice given in the last paragraph of his communication, he will be safe and esteemed—he will form one of the honourable exceptions. Let your young correspondents recollect that they are not personally known, and therefore they cannot be personally attacked, and that if they consider that I am wrong in my conclusions, to endeavour to convince me and your correspondents that we are wrong, by argument, and not by a foolish attempt at personal attack, which must fail, because the party attacked is personally unknown to them—I, as your correspondent, take nothing personal to myself.

You cannot have helped remarking, that in all the letters of the opponents to my views, there has been no argument or answer—nothing which would have convinced a non-professional party that my party were mistaken; but on the contrary, the letters written in support of my view have contained uncontradicted and unanswered facts and arguments, and I certainly was extremely grieved to find that you, in face of all the facts brought forward, still think that attorneys as a class are well thought of. I am grieved that the various facts brought forward should either have escaped your notice or not have been considered by you as bearing on the question.

I think, sir, that it must be admitted that society generally do not entertain a favourable opinion of attorneys, and that to attorneys, as a class, such opinion is felt very generally amongst the higher members of society. I have within my own circle of friends an instance—a young gentleman just leaving Rugby, about 18, the grandson of two baronets, whose parents are not sufficiently well off to leave him a fortune, wish to place him in a profession; they think that he will not do for the bar, because he is slightly nervous—the church he does not like—the army the same—as for an attorney, the parents would not hear of it. On my proposing to take the young gentleman into my firm, the lady said,—"If all attorneys were like Messieurs —, we should have no objection; but in what a position do attorneys generally stand in society—I could not bear to think of my son being called a vile attorney." This, sir, is a positive fact, and was very conclusive; it happened that very shortly after this I attended a meeting of attorneys at the Law Institution, relative to the Repeal of the Certificate Duty, and certainly the proceedings of the attorneys at that meeting tended to confirm the lady's idea of attorneys, and as I sat at the table I could not help wondering how it was that men, who ought to have been brought up as gentlemen, should have conducted themselves in so bearish a manner. I could not think that such men had received proper education—that their parents had expended about 1,000*l.* in and about their articles, and it was mainly in consequence of that meeting that I was induced to consider the question which I have mooted.

As to the causes which have produced the unfavourable opinion, I have instituted many inquiries, and found a pretty general complaint of the practice of giving articles to paid clerks,—that attorneys did nothing to make themselves respected—that almost any one who could "read, write, and cast up accounts," and who could scrape together 150*l.*, could get into the profession as an attorney—that instances of malpractice were not very numerous, not sufficiently so at all events to give a tone to the profession—but that vulgar manners and vulgar habits were very prevalent, the reason of which is, no doubt, that we as a class have been excluded from all the offices before enumerated by me, and, as it seems, from many of the clubs.

As to the remedy.—First let all the present attorneys distinguish themselves as a class, by at once adopting a proper costume in Court. Let them carry out towards each other the same gentlemanly feeling that is exhibited by the gentleman at the bar. Let there be no more "snapping of judgments," "demurrers for omissions of single words,"—do not let us be over grasping in the matter of costs.—Let us endeavour to keep the profession in future more select. Let there be a rule amongst us not to take articled clerks, "except sons or nephews," under a fee of 500*l.*, and on no account whatever to pay a salary during articles. Let a preliminary examination be required in Greek, Latin, and French, previous to articles. If these remedies (particularly the first and the last) were strictly required, I feel convinced that the profession of an attorney would soon be considered as one into which the higher classes might send their sons, and then speedily the whole tone of the profession would experience a change for the better.

AN ATTORNEY.

It may be proper to explain that the meeting at the Law Institution, to which reference is above made, consisted, not of the members of that society only, but of the whole profession; and those upon whom the Certificate Tax most severely pressed naturally attended in large numbers. Five or six hundred persons who meet upon an exciting subject are not very choice in the expression of their opinions, whether on "the floor of St. Stephens," the Guildhall of the City, or the Hall in Chancery Lane. It was proposed in one of the resolutions, as an alternative, that, in case the obnoxious impost could not be removed, on the ground of its promoting the respectability of the profession, it should be applied towards the better education of candidates and the improvement of the profession. This was vehemently opposed by the majority, who thought that to pay 90,000*l.* a year to the government, to be doled out under their patronage and superintendence for purposes however desirable, was a proposition not to be endured. The profession had given proof of its disposition to effect many improvements at its own expense and might be trusted with the management of its own affairs. Hence arose the stormy discussion, and it must be admitted, that the rules of orderly debate were very sadly violated in resisting the supposed compromise. In all other respects the business of the meeting was properly conducted, and the measures to be adopted were committed to the council of the society.

Our worthy correspondent, will, we trust,

duly appreciate our wish to vindicate a large body of the profession; for we really apprehend, if the conduct, character, and attainments of that body be so generally objectionable and deficient as some of our correspondents have represented, there can be little expectation of any material amendment for many years to come. Indeed, if the opinion of the baronet's lady, like that of Pope and other writers a century ago, be still well founded regarding the

"Vile attorneys, not a useless race,"

we should despair of the efficacy even of the *Toga* and the *Præmium*.

POSTPONED BILLS RELATING TO THE LAW.

WE have from week to week, during the Sitting of Parliament, stated the progress made in the several measures relating to the Law, and now, at the close of the Session, it will be convenient to give a complete List of the Bills postponed or withdrawn by their proposers, or negatived by Parliament, with the several stages at which they arrived, and the names of their proposers, distinguishing such as had passed one of the Houses of Parliament. They are as follow;

House of Lords.

Administration of Justice.

Criminal Law Consolidation. In Select Committee.—Lord Brougham.

Proceedings against Clergy. For 2nd reading.—Bishop of London.

Law of Evidence. For 2nd reading.—Lord Brougham.

Trustees Conveyances. Brought from the Commons.—For 2nd reading.

Affirmations in lieu of Oaths. Brought from the Commons.

Law of Property.

Assignment of Life Policies. Brought from the Commons.

Law of Parliament.

Independence of Parliament. For 2nd reading. Lord Brougham.

Bribery at Elections. Brought from the Commons.—For 2nd reading.

Corrupt Practices at Elections. The Lord Chancellor.

Parliamentary Oaths. Brought from the Commons.

Roads, Sewers, &c.

Laws Relating to Highways. Select Committee.—Earl St. Germans.

Cities and Boroughs Common Lands. For 2nd reading.—Earl Carlisle.

House of Commons.

Law of Property and Conveyancing.

Real Property Transfer. In Select Committee.—Mr. H. Drummond.

Joint-Stock Companies' Transfers of Shares. For 3rd reading.—Mr. Headlam.

Joint-Stock Banks.—Mr. Headlam.

Improvement of Law of Landlord and Tenant. For 2nd reading.—Mr. Pusey.

Parochial Assessments.—Sir H. Inglis.

Audit of Railway Accounts. Brought from the Lords.

Partition and Sale of Joint Chattels. In Committee.—Mr. R. Palmer.

Estates Leasing (Ireland). — Solicitor-General.

Copyhold Compulsory Commutation.—Mr. Aglionby.

Administration of Justice.

Charitable Trusts. Brought from the Lords. Palace Court. In Committee.—Lord D. Stuart.

Administration of Justice, (Metropolitan Districts.) Attorney and Solicitor-General.

Fire Inquests.—Mr. Wyld.

Juvenile Offenders.—Mr. Milnes.

Law of Parliament.

Vote by Ballot.—Mr. H. Berkeley.

Qualification of Voters.—Sir De Lacy Evans.

Insolvent Members, (No. 2.) Mr. Moffatt.

Triennial Parliaments.—Mr. D'Eyncourt.

Miscellaneous.

Law of Marriage. Hon. J. S. Wortley.

Marriages by Licence.—Mr. Ewart.

Friendly Societies. In Select Committee.

Union of Parishes and Highway Surveying. For 2nd reading.—Mr. Frewen.

Law of Scotland.

Marriages. Brought from the Lords.

Births' Registration. Brought from the Lords.

RECENT DECISIONS IN THE SUPERIOR COURTS.

AND SHORT NOTES OF CASES.

Holls' Court.

August 1.—*Kirkus v. Atkinson*—Stand over.

— 1, 2, 3.—*Taylor v. Cooper*—Motion refused to stay proceedings until plaintiff should have complied with an order of Court.

— 3.—*In re Burchell*—Petition dismissed without costs.

— 3.—*Chambers v. Howell*—Pleas to stand as answers, with leave to plaintiff to except thereto.

— 4.—*Christy v. Courtenay*—Reference to the Master as to the state of the debts, &c., of defendant.

— 4.—*Attorney-General v. Corporation of London*—Application granted to stay proceedings till appeal could be heard.

— 4.—*Taylor v. Taylor*—Application refused to appoint receiver.

— 4.—*Gossett v. Vision*—Time extended for drawing up the minutes.

Vice-Chancellor of England.

In re Shrewsbury Grammar School. May 7, 1849.

GRAMMAR SCHOOL.—SUSBISTING TRUST.—ALTERATIONS.—PRACTICE.

Where a petition was presented under Sir Samuel Romilly's Act, with reference to certain alterations in a grammar school which was regulated by a previous act, and which would cause a deviation from the subsisting trust, the Court refused to interfere.

Semhle, such alterations must be made the subject of an information.

THIS petition was presented by the governors and trustees of the Shrewsbury Grammar School for its regulation with reference to certain suggestions and alterations proposed to be made, to which the trustees did not object. They presented this petition under Sir Samuel Romilly's Act, notwithstanding they possessed large powers under the 38 G. 3, c. lxxviii., by which the school was regulated and endowed.

The *Solicitor-General* and *J. R. Kenyon* for the petitioners; *Stuart* for the Bishop of Lichfield, the visitor; *Rolt* and *Wray* for the bailiffs and burgesses of the corporation; *Bacon* and *Glasse* for St. John's College, Cambridge.

Beihell and *Wickens*, for Dr. Kennedy, the head master of the school, contended that the Court had no jurisdiction under Sir Samuel Romilly's Act.

The *Vice-Chancellor* said, that the Court would interfere to carry out the regulations under the 38 Geo. 3, c. lxxviii., as it was in the nature of a trust; but here it was to interfere with a subsisting trust, and to enable the trustees to deviate therefrom and exceed its limits. The proper course would therefore be by information, and the petition must be dismissed,—the costs to be paid out of the funds in the treasurer's hands.

August 1.—*McClure v. Ripley*—Injunction continued restraining action at law.

— 2.—*Attorney-General v. Trevelyan*—Master's report confirmed.

— 2.—*In re Duke of Marlboro's Estates, Ex parte Oxford, Worcester, and Wolverhampton Railway Company*—Reference to the Master as to money to be paid by company to petitioner for expenses connected with taking land for railway.

— 3.—*Bell v. Bell*—Declaration that administrators not entitled to retain a debt due from insolvent to intestate out of his share of the estate, but that it vested in the assignees.

— 3.—*Billage v. Southes*—Injunction granted to restrain proceeding at law.

— 4.—*Benyon v. Nettlefold*—Order to commit defendant for breach of injunction in proceeding with action at law, but the Lord Chancellor, on the 5th, reversed the order on the defendant's solicitor undertaking to withdraw the record in the action.

Vice-Chancellor Knight Bruce.

(In Bankruptcy.)

Ex parte Sturges, in re Kernot; Catlin, respondent. June 25, 27, 1849.

MORTGAGE.—HUSBAND AND WIFE.—VALUITY.

Where a married man takes a mortgage in his own name for monies advanced by his wife out of her separate property before marriage, held a good mortgage.

THIS case came on upon the question of the validity of the debt claimed by the petitioner in right of advances by his wife to the bankrupt, and as to the validity of a mortgage held by the petitioner for the same.

Bacon and *Bagshawe* for the petitioners; *Swanston* and *Shebbeare* contra.

The *Vice-Chancellor* said, that the petitioner was entitled, as a *bond fide* creditor, to present his petition, and to have the fiat annulled, if the present petitioning creditor's debt was held insufficient on the trial at law. A mortgage taken by a married man in his own name for money which had been advanced by his wife out of her separate property before marriage was a good mortgage, and available both at law and in equity.

August 1.—*Prince Albert v. Strange*—Order by consent staying proceedings so far as regarded the destruction of catalogues deposited with the Clerk of Records and Writs.

— 2.—*In re Great Western Railway of Bengal Company*—Order for winding up.

— 2.—*In re Peterborough and Nottingham Junction Railway Company*—The like.

— 2.—*Stanley v. Plevins*—Order for payment to plaintiff of damages and costs awarded by Master by reason of a writ of *ne cessat regno*, and imprisonment thereunder.

— 3.—*Wood v. North Staffordshire Railway Company*—Stand over to November 10.

— 3, 4.—*Ex parte Parbury, in re Direct London and Exeter Railway Company*—Master's report inserting name in list of contributories confirmed.

— 4.—*In re Vale of Neath Brewery, Ex parte Richmond's Executors*—Motion to remove name of executors from list of contributories refused, without costs.

— 6.—*Briggs v. Penny*—Judgment on construction of will.

— 6.—*Ex parte Clabbon, in re Clabbon*—Stand over until action tried at law.

Vice-Chancellor Wigram.

August 1, 2, 3.—*Whiston v. Dean and Chapter of Rochester*—Cur. ad. vult.

— 3.—*Brogden v. South Eastern Railway Company*—Order on company to pay monies certified by engineers to be due under contract—Reference to the Master as to completion of contract by specified time.

— 4.—*Attorney-General v. Price*—Compromise—with reference to the Master to approve of a scheme and appoint new trustees—further directions and costs reserved.

Circuit's Remedy.

(Before the Four Judges.)

Higgins v. Inhabitants of Barneley. May 12, 1849.**PROPER IDIOT:—REMOVABILITY.—CUSTODY WHEN HARMLESS.**

Held, upon appeal from the Quarter Sessions quashing an order of removal of a pauper idiot, first that a prior removal on the same grounds in 1844, deprived the pauper of irremovability under the 9 & 10 Vict. c. 66; and secondly, that a harmless idiot need not be sent to an asylum under the 8 & 9 Vict. c. 126, but may remain under the care of his parents..

In 1844, Thomas Watson, a pauper, with his wife and son, who was an idiot, had been removed under an order from the township of Barneley, in the West Riding of Yorkshire, to Tamworth, in Staffordshire. It appeared, however, that the pauper and his wife were removed on the ground that they were the most proper persons to take care of their son. They remained a few days at Tamworth workhouse, and returned to Barneley, the parish of Tamworth allowing them a weekly sum of money for the support of their son. In 1847, they were again removed to Tamworth, and that parish appealed to the West Riding Sessions, who quashed the order subject to the opinion of this Court.

Pashley and Boothby, in support of the order of sessions, contended that the pauper was irremovable under the 9 & 10 Vict. c. 66, by reason of his having resided five years in the removing parish, and that the pauper being an idiot could not be removed to the place of his settlement; but must be sent to a lunatic asylum as directed by the 8 & 9 Vict. c. 126.

Overend, contra.

The Court held, that the removal of the pauper in 1844, was such a disruption of his residence in the removing parish as to take the case out of the first section of the 9 & 10 Vict. c. 66, and render him liable to removal. By the 8 & 9 Vict. c. 126, which was an act to amend the laws for the erection and regulation of lunatic asylums, those persons only who were dangerous must be sent to an asylum, while idiots who were harmless might remain with their family, and might be with them removed to their place of settlement. The order of sessions must, therefore, be quashed, and the order of removal confirmed.

Court of Common Pleas.**Blard v. Hyerton.** Jan. 18, 20; June 25, 1849.**PATENT:—SUFFICIENCY OF SPECIFICATION.**

Held, that, in the construction of a patent, the Court would read a specification so as to support it, if it could be supported, and where, therefore, it was apparent from the specification of a patent for taking daguerrotype likenesses, that a process which would have rendered the plates useless was

not intended to be used in the manner supposed, the Court made a rule absolute to enter verdict for the plaintiff, on an issue raised by a plea, setting out such supposed process as invalidating the patent.

THIS action was brought for the infringement of a patent in an invention for taking daguerrotype likenesses. The defendant pleaded *inter alia* that the specification was bad, as one of the processes, viz., to use acid after the coating of the plates with iodine, and which was stated to be indispensable in preparing the plates on which the likenesses would be produced, would render the plates useless. The verdict was directed on that issue for the defendant, with leave reserved to the plaintiff to move to enter a verdict for him in lieu thereof, if the Court should be of opinion that the objection was not fatal. A rule nisi had been accordingly obtained to enter the verdict on that issue for the plaintiff.

Sir **P. Thesiger**, **R. Robinson** and **Webster** in support of the rule; **Watson**, Q. C., **Grove** and **Brown**, contra.

Cur. ad. vult.

The Court (June 25,) said, that following the rule of construction as applicable to specifications, pointed out in the decisions of **Russell v. Comley**, 1 Gr. M., & R. 864; **Neiles v. Harford**, 8 M. & W. 806; and **M. Alpine v. Mangnall**, 3 C. B. 518; to the present case, it appeared that specifications should not be calculated to mislead a person of fair intelligence, and that in the construction of a patent the whole of the specification should be considered in support. Here it was sufficiently apparent that no process was intended to intervene between preparing the plate with iodine and using it to receive the picture, and the objection could not prevail. The rule must, therefore, be made absolute to enter the verdict for the plaintiff.

Court of Exchequer.**Spooner v. Payne.** May 28, 1849.**PENSION OF RETIRED COMMISSIONERS OF BANKRUPTS.—VESTING ORDER.**

Held, that the compensation paid to a country Commissioner of Bankrupts upon the abolition of that office, was not within the exceptions of the 1 & 2 Vict. c. 110, s. 56, but passed to the assignees under the vesting order.

THIS was a special case sent by the Vice-Chancellor, Knight Bruce, for the opinion of this Court, whether an annuity of 199^{l.}, awarded to the defendant for life as compensation for the emoluments as country Commissioner of Bankrupts, passed to the official assignee or not. (See **Reporte Spooner**, *infra* **Payne**, 1 De Gex, 555.) It appeared that after the compensation was granted the defendant became embarrassed, and a vesting order was made under the 1 & 2 Vict. c. 110, s. 36, 37.

By the 56th section it is enacted, that "nothing in this act contained shall extend to anything the assignee or assignees of the estate and

effects of any such imprisonment, being or having been an officer of the army or navy, or an officer or clerk, or otherwise employed or engaged in the service of Her Majesty, in the customs or excise, or any civil office or other department whatsoever."

Whitehurst for the assignee; *Watson* for the defendant.

The Court held, that the defendant was not entitled to receive the pension, as it was merely a compensation for the surrender of his emoluments as Commissioner of Bankrupts, and formed part of his personal estate, and that therefore it passed to the assignee, and was not within the exception of the 1 & 2 Vict. c. 110, s. 56.

Nisi Prius.

(Coram Wilde, L. G. J.)

Grant and others v. Norway and others. June 29, 1849.

BILL OF LADING.—FALSE STATEMENT.—AUTHORITY OF CAPTAIN AS AGENT..

Quere, whether the captain of a ship has such a general authority as agent from the shipowners to bind them by a bill of lading signed by him, containing a false statement of the shipment of goods, and upon the faith of which statement the assignee thereof had bona fide accepted the bill as a collateral security.

This action was brought by the assignee of a bill of lading to recover damages against the

owners of a vessel called the "Belle," for a false representation contained in such bill of lading. The vessel was, in April, 1846, lying at Calcutta, having been chartered by Messrs. Beale & Co., who induced the captain to sign, on the 17th, a bill of lading containing a statement that 12 bales of silk had been shipped on board, the value of which would have amounted to 700*l.*, whereas no such bales had been shipped. On the 18th April, the charterers drew a bill of exchange for 1,694*l.* on Messrs. Johnston & Co., and transferred it to the plaintiff, at the same time handing over to them the bill of lading as a collateral security. The parties liable on the bill having failed, the plaintiff sought to recover the acknowledged value of the bales of silk.

Crowder, Q. C., Channell, S. L., and Bovill, for the plaintiff, contended that the owners of the ship were liable for the acts of their agent to third parties, who are *bona fide* holders for value, without notice, and had made advances on the bill of lading.

Morris, Q. C., Butt, Q. C., and Clesby, for the defendants, urged that the authority of the captain, as agent of the shipowners, only extended to the executing lawful contracts, and not to the present case, where he had made a false representation.

The Court was of opinion that the question turned on matter of law rather than of fact, and should, therefore, be decided by the Court. The facts were accordingly agreed to be stated in a special case for the opinion of the full Court.

ANALYTICAL DIGEST OF CASES:

REPORTED IN ALL THE COURTS.

Courts of Equity.

LAW OF PROPERTY AND CONVEYANCING.

[For the previous Sections of this Series of the Digest in the present Volume, see,—

Privy Council :

Appeals, 38.

House of Lords :

Appeals, 171.

Courts of Bankruptcy, 211.

Courts of Equity :

Law of Costs, 234.

Law of Wills, 252.

Construction of Statutes, 271.]

ANNUITY:

Priority of incumbrances.—Certain incumbrances had been reported by the Master as entitled to priority over the plaintiff, and leave had been obtained to file supplemental bill to bring them before the Court. The plaintiff, having impeached therein some of these incumbrances, such parts were ordered to be dis-

missed with costs. *Hale v. Lord Bezeley and others*, 37 L. O. 433.

CHARITY ESTATES.

See Dease:

COVENANT RUNNING WITH LAND:

1. *Jurisdiction.*—*Injunction.*—A purchaser of land, which was conveyed to him in fee simple, covenanted for himself, his heirs, executors, administrators and assigns, with the vendor, his heirs, executors, and administrators, that the land should be used and kept in ornamental repair as a pleasure garden, for the benefit of the occupiers of houses in the neighbourhood, which belonged to the vendor. *Held*, that the vendor was entitled to an injunction against the assigns of the purchaser, to restrain them from building upon the land, although the character of the neighbourhood had been greatly changed by the increase of building there, and its privacy as a place of residence had been very much diminished by the opening of thoroughfares, and the occupiers of the vendor's houses had ceased to use the garden, or to pay for the privilege of doing so; and although the vendor had not obtained any de-

cision in a Court of law, whether the covenant did or did not run with the land, so as to be binding on the parties who claimed under the original purchaser. The jurisdiction of this Court, in such cases, is not fettered by the question, whether the covenant does or does not run with the land. *Twk v. Moskay*, 1 H. & T. 105; S. C. 37 L. O. 212.

Cases cited in the judgment: *Heriot's Hospital v. Gibson*, 2 Dow, 301; *Mana v. Stephens*, 15 Sim. 377.

HEIR LOOMS.

A discretion annexed to a bequest of chattels that they shall go as heir looms, although accompanied by a direction to the executors to make an inventory of them, does not render such bequest executory, or give to a Court of Equity any power to modify the legal effect of the bequest, whatever that may be; the rule, though disapproved, being too firmly settled by modern decisions, overruling the contrary doctrine of Lord Hardwicke in *Gower v. Grosvenor*, Barnard, 54; 5 Madd. 327, and *Trafford v. Trafford*, 3 Atk. 347, to be now disturbed. *Rowland v. Morgan*, 2 Phill. 764.

Cases cited in the judgment: *Duke of Newcastle v. Lady Lincoln*, 12 Ves. 217; *Foley v. Burnell*, 1 Bro. C. C. 274; 4 Bro. P. C. 328; *Vaughan v. Burslem*, 3 Bro. C. C. 100; *Carr v. Lord Erroll*, 14 Ves. 478; *Lord Deerhurst v. Duke of St. Alban's*, 5 Madd. 232; *Lord Dorchester v. Earl of Effingham*, 3 Beav. 180, n.; *Mackworth v. Hinzman*, 2 Keen, 658.

HUSBAND AND WIFE.

See *Marriage Settlement*.

INCUMBRANCES.

See *Annuity, Mortgage*.

INJUNCTION.

See *Covenant*.

LEASE.

Charity estates.—A lease of charity estate for 1000 years was declared void, and an account of rents directed to be taken. *Attorney-General v. Pilgrim and others*, 37 L. O. 512.

MARRIAGE, RESTRAINT OF.

A covenant to pay *E. C.* during her life, subject to the proviso thereafter-contained, an annuity of 40*l.*; the proviso being, that in case *E. C.* should at any time thereafter happen to marry, the annuity should thenceforth be reduced to 20*l.* only, which sum should in such case be paid and payable to *E. C.*, from the time of her marriage for the remainder of her life. *Held*, (reversing the decision below) to be in effect, a covenant to pay an annuity of 40*l.* until marriage, and afterwards an annuity of 20*l.* only: the proviso for reducing the annuity being part of the original gift itself, and not operating as a condition subsequent, so as to be void as in restraint of marriage. *Webb v. Grace*, 2 Phill. 701.

Cases cited in the judgment: *Riebarth v. Baker*, 2 Atk. 321; *Sheffield v. Lord Orrery*, 3 Atk. 282; *Gordon v. Adolphus*, 3 Bro. P. C. 306.

MARRIAGE SETTLEMENT.

1. *Husband and wife*.—*Reduction into possession*.—Under a marriage settlement, executed by an infant, a sum of 1,000*l.* was to be transferred on the infant attaining 21, and at her request from the trustees holding the same, to the trustees of the settlement.

Held, that the transfer thereof during the husband's life, about the time of her attaining 21, amounted to a reduction into possession. *Cunningham v. Antrobus*, 37 L. O. 212.

2. *Surviving children*.—Under the terms of a settlement, *Held*, that the representatives of the children who died in the wife's lifetime, took no interest in the trust fund. *Wynn v. Fenwick*, 37 L. O. 473.

3. *Construction*.—Upon construction of a marriage settlement, *Held*, that the fund settled became vested in the children of the marriage as they attained 21, and to their representatives, if dead. *Gordon v. Hope*, 37 L. O. 493.

MARRIED WOMAN.

1. *Merger*.—A fund in Court was subject to trust for a husband for life, remainder to his wife for life, remainder to their son absolutely. The husband and son, by deed, surrendered and released their respective interests to the wife, for the express purpose of giving her a present absolute interest in the fund, and thereby enabling her to assign it at once to the son. But a petition by the three for payment of the fund to the son was refused, on the ground that this Court will not establish an equitable merger by analogy to law, where the effect would be to defeat its own rules and practice in the protection of married women from the marital control. *Whittle v. Henning*, 2 Phill. 731.

Cases cited in the judgment: *Purdew v. Jackson*, 1 Russ. 1; *Stiffe v. Everitt*, 1 M. & C. 37; *Hall v. Hugonin*, 14 Sim. 595; *Homer v. Morton*, 3 Russ. 65; *Thorn v. Newman*, 3 Swanst. 603; *Nurse v. Yerworth*, 3 Swanst. 618; *Richards v. Chambers*, 10 Ves. 580; *Doswell v. Earle*, 12 Ves. 473; *Pickard v. Roberts*, 3 Madd. 384; *Story v. Tonge*, 7 Beav. 91; *Lachton v. Adams*, 14 Law J., Ch. 389; *Wilson v. Oldham*, 14 Sim. 594; *Creed v. Perry*, 14 Sim. 592.

2. *Chose in action*.—*Reversionary interest*.—A sum of stock was vested in a trustee in trust for *A.* for life, remainder in trust for his wife, absolutely. *A.* became bankrupt, and his assignees sold his life-interest to *B.* Some years afterwards, *B.*, for valuable consideration, assigned the life-interest to the wife. And, on her appearing in Court and consenting, the Vice-Chancellor ordered the trustee to transfer the fund to her husband. But the Lord Chancellor, in *Whittle v. Hemming*, 2 Phill. 731, overruled the principle of the decision. *Bishop v. Colebrook*, 16 Sim. 39.

MORTGAGE.

1. *Trustee*.—Payment of mortgage debt to one trustee only under a marriage settlement without the authority of the other *held* bad, and

the money so paid being misapplied and lost, the money was ordered to be re-invested. *Hall v. Franck and others*, 37 L. O. 452.

2. Priority of incumbrancers.—*Parol evidence.*—A mortgagee of leaseholds for 1,150*l.* enters into a parol agreement with the mortgagor to concur in a new mortgage for 750*l.*, to be paid to the original mortgagee in reduction of her debt, so that the new mortgage should be the first charge, but upon an express understanding that the mortgagee should execute to her a second mortgage for the balance. The new mortgage was executed accordingly, and it recited, that the original mortgagee had agreed to accept 750*l.*, and to release the premises from the monies secured by the original mortgage, and to make other arrangements with the mortgagor for payment of the residue of the 1,150*l.*; and the deed witnessed that, in pursuance of such agreement, and in consideration of 750*l.* paid to the original mortgagee, she and the mortgagor assigned the mortgage premises to the new mortgagee for 750*l.*, discharged from the original mortgage. Afterwards, the 750*l.* was paid off by another person, to whom the mortgagor applied for that purpose, on an agreement for an assignment; but all parties had notice of the original agreement with the original mortgagee. On the original mortgagee filing a bill to be declared first incumbrancer, or to redeem: *Held*, that she might adduce parol evidence of the agreement with her, and was entitled to redeem on payment of the 750*l.* and interest, but had not a lien prior to that of the person who had last advanced that sum. *Banks v. Whittall*, 1 De G. & S. 536.

MORTGAGE, EQUITABLE.

An equitable mortgagee, by deposit, of a lease, is not compellable in equity, at the suit of the lessor, to take a legal assignment of the lease, although he may have entered into possession of the premises and paid rent.

Nor, *semble*, is he liable to the lessor upon the covenants, there being no privity between him and the lessor until he has made himself legal assignee. *Lucas v. Comerford*, 3 Bro. C. C. 166; 1 Ves. 235; 8 Sim. 499, overruled. *Moore v. Greg*, 2 Phill. 717.

PARTNER.

Retaining property because sale illegal.—One of two partners, who has possessed himself of the property of the firm, cannot be allowed to retain it by merely showing that, in realising it, some provision of some act of parliament has been violated or neglected. *Sharp v. Taylor*, 2 Phill. 801.

POWER.

Presumption.—*Insufficient attestation.*—By a marriage settlement of 1813, stock was settled, upon trust, in the events which happened, for such persons as a married woman should, during and notwithstanding coverture, (among other modes,) by her last will and testament, in writing, or any writing purporting to be

or in the nature of a will, to be by her duly signed, sealed, and delivered, in the presence of, and to be attested by, two or more credible witnesses, give, direct, limit, and appoint. The husband of the donee died in 1819, and the donee in 1840. After the death of the donee of the power, a writing was found in the form of a letter, and sealed on the outside only, purporting to bear date August 20, 1816, and to be made in execution of the power, and concluding thus, "as witness my hand and seal," with a signature purporting to be that of the donee, and two other names in other handwriting, but with no memorandum of attestation. On a reference to the Master, in 1847, as to the form and manner of the execution of this paper, no evidence could be produced but such as was afforded by the document: *Held*, that the document was not shown to be a due execution of the power. *Burakam v. Bennett*, 1 De G. & S. 513.

PRIORITY OF INCUMBRANCES.

See Annuity.

PROPERTY IN UNPUBLISHED LECTURES.

1. Orally delivered.—*Infringement by third person.*—An injunction will be granted against third persons publishing lectures orally delivered, who have procured the means of publishing those lectures from parties who attended the oral delivery of them, and were bound by the implied contract. *Abernethy v. Hutchinson*, 1 H. & T. 28.

2. Orally delivered.—*Infringement by pupil.*—A person who attends oral lectures is not justified in publishing them for profit; and an action at law will lie upon the implied contract by the lecturer against a pupil attending oral lectures who causes them to be published for profit. *Abernethy v. Hutchinson*, 1 H. & T. 28.

Cases cited in the judgment: *Millar v. Taylor*, 4 Burr. 2303; *Duke of Queensberry v. Shebbeare*, 2 Eden, 329; *Pope v. Curl*, 2 Atk. 342.

PROPERTY IN UNPUBLISHED WORKS.

1. The maker and owner of etchings which have never been exhibited or published, and of which no impressions have been made, except for his private use, but impressions whereof have, by improper and surreptitious means, come into the possession of other parties, is entitled to an injunction, not only to restrain those parties from exhibiting those impressions and from publishing copies of them, but also to restrain them from publishing a catalogue compiled by themselves, in which an enumeration and descriptive account of those etchings are contained, and that, although there is no violation of any contract, either express or implied, between the owner and the compilers of the catalogue. *Prince Albert v. Strange*, 1 Hall & Twells, 1.

Cases cited in the judgment: *Sir John Strange's case*, temp. Hardwicke, 1754; *Duke of Queensberry v. Shebbeare*, 2 Eden, 329; *Abernethy's case*, 3 Law J., Ch., 209; *Tipping v. Clarke*, 2 Hare, 393; *Wyatt v. Wilson*, temp. Eldon, 1820.

2. The right and property of an author or composer of any work, whether of literature, art, or science, in such work unpublished and kept for his private use or pleasure, entitles the owner to withhold the same altogether, or so far as he may please, from the knowledge of others; and the Court will interfere to prevent the invasion of this right by the publication of a catalogue containing a description of such work. *Prince Albert v. Strange; Same v. Judge*, 1 M.N. & G. 25.

Case cited in the judgment: *Sir John Strange's case*, temp. Hardwicke, 1754.

(SALE OF REVERSIONARY INTEREST.

Alleged fraud.—This Court will not interfere to set aside the sale of a reversionary interest, unless the evidence adduced supports the case made by the bill. *Boothby v. Boothby*, 37 L.O. 318.

SETTLEMENT, REFORMING.

No legal estate affected.—A settlement of a trust fund, whereby no legal estate was affected, reformed by a declaration in the decree, without a reference, or the execution of any fresh instrument, and the form of such order. *Tebbutt v. Tebbutt*, 1 De G. & S. 506.

See *Marriage Settlement*.

SPECIFIC PERFORMANCE.

1. *Unconditional acceptance of offer.*—A proposal by a purchaser to take the remainder of a lease was answered by a letter, which, after acceding to the proposal, added, "We hope to give you possession at half-quarter day." *Held*, that the addition did not introduce a new term, but that the acceptance was unconditional. *Clive v. Beaumont*, 1 De G. & S. 997.

2. *Waiver of time of completion.*—When a purchaser has consented to enlarge the time for completion, and where a vacant possession was of the essence of the contract, it is competent for him to object to complete at the expiration of such enlarged time if the possession is not then vacant, and if he has done no act towards completion of the contract after he had notice that vacant possession could not be given at the day. But where a purchaser had by his acts waived the time of completion in the first instance, and had gone on for some time inducing the vendor to incur expenses to perfect his title, and suddenly, upon the discovery that vacant possession could not be given according to stipulation, declined to complete, the Court, although it dismissed a bill filed against such a purchaser for a specific performance, dismissed it without costs. *Nokes v. Lord Kilmorey*, 1 De G. & S. 444.

3. *Time, when of the essence of the contract.*—*Evidence.*—In a suit by a vendor for specific performance against a purchaser, if the contract stipulated that the possession should be given at a specified day, it is competent for the purchaser to insist that both time and a vacant possession are of the essence of his contract; and the Court will receive, as evidence that such was the purchaser's object, statements made by the

agent of the purchaser at the time of signing the contract. *Nokes v. Lord Kilmorey*, 1 De G. & S. 444.

4. *Time essence of contract.*—Bill for specific performance of a contract dismissed on the ground that the works had not been completed within the specified time, and it appearing that time had been made of the essence of the contract by the defendants. *Ladbroke v. Smith*, 37 L.O. 275.

TRUSTEE.

1. *Annuitants.*—Power was given to appoint trustees, or a trustee, and one trustee was solely appointed. A sale took place, and on an objection by the purchaser, another trustee was appointed and the sale was completed, both trustees executing the conveyance. Afterwards the first-named sole trustee failed, and the purchase-money was lost. The annuitants on the fund were held not entitled to relief against the purchaser. *Miller v. Pridden*, 37 L. O. 433.

2. *Appointment of new trustees.*—The Master directed to appoint a new trustee, although some of the *cestuis que trust* were infants, and another was out of the jurisdiction. *Hasterv. Gibson*, 16 Sim. 158.

See *Mortgage*.

VENDOR AND PURCHASER.

1. *Waiver of landlord's title.*—*Samble*, that where a purchaser, after transmission to him of the original lease, prepares a draft assignment, and makes various objections as to repairs and other matters, but does not require production of the landlord's title, he will be considered to have waived its production. *Clive v. Beaumont*, 1 De G. & S. 397.

2. *Railway company.*—*Interim investment.*—*Real security.*—*Reference as to mortgage.*—Form of order of reference as to temporary investment. On a proposed real security of money paid into Court upon the purchase of land by a railway company on the Master reporting against the proposed investment, and that no investment on real security would be for the benefit of the parties: *Held*, that it was competent to the Master so to report; and the Court declined to order the investment to be made. *Ex parte Franklyn, in re Great Northern Railway Act*, 1846, 1 De G. & S. 528.

3. *Misdescription.*—*Compensation.*—*Indemnity.*—Purchaser not entitled to compensation, where the misdescription consisted in stating, that the premises sold were in the joint occupation of A. and B. as lessees, the fact being that the premises had been demised to C., and by C. assigned to A., who was, together with B., in the occupation of them at the time of sale. The purchaser could not, in this case, be compelled to accept an indemnity. *Ridgway v. Gray*, 1 M.N. & G. 109.

VOLUNTARY SETTLEMENT.

Creditors.—A voluntary settlement made by a married man on a woman with whom he had cohabited, and her children, is void as against creditors, the settlor being at the time of the execution of the settlement in insolvent circumstances. *Scarf v. Sowby*, 37 L. O. 155.

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BANKRUPT LAW CONSOLIDATION ACT.

THE City Committee appointed to promote the Amendment of the Bankrupt Law, have printed and extensively circulated a report, containing an epitome of the supposed improvements effected by the new act, which comes into operation on the 11th October next.

The Committee anticipate, in the first place, that great practical benefit will arise from the provisions introduced into the act, enabling insolvent traders, with the assent of a proportionate majority of their creditors, to obtain personal protection, and wind up their affairs either by trustees, without the interference of the Court, or under the superintendence of the Court with the aid of an official assignee, and in either case without the stigma of bankruptcy. It would be altogether premature to anticipate whether the provisions referred to will work well in practice; but as the principle involved in them has been much questioned, and we have already stated unreservedly our own sentiments upon it, we may be excused for referring to the answer given by Vice-Chancellor Knight Bruce in the Commons' Committee, to the question, whether he deemed it advisable to introduce these clauses into the act. His Honour said—

"I am strongly against every provision which interferes with arrangements which ought to be voluntary, and every provision which makes the rights of one man dependent upon the judgment or will of another. I think them unjust in principle. I would not give a power to nine creditors out of ten to accept an arrangement that should bind the tenth, whether he would or not, to say in effect, whether the tenth shall or shall not have his debt paid. I object to the majority binding

the minority: one private man ought not to regulate the rights of another."

And when reminded that, by one or both of the modes of arrangement provided by the bill, the judgment of a Commissioner of the Court of Bankruptcy might be taken by a dissenting creditor, the learned Vice-Chancellor observed:—"I think practically the Commissioner would be likely to be swayed by the opinion of the majority."

The City Committee also lay great stress upon the provision (introduced at their suggestion into the bill) by which it is left to a Commissioner, after hearing the case and judging of the conduct of the bankrupt during his examinations, "to grant either a *first class* certificate, which declares the trader's inability to pay his debts has arisen from misfortune only; or a *second class*, in which it is declared to have arisen partly from misfortune; or a *third class*, in which it is declared not to have arisen from misfortune." But they totally disapprove of the modification introduced by the House of Commons in this part of the act, by which "the debtor has an appeal to the Vice-Chancellor, not only on the certificate, but also respecting the class in which it is to be placed." The grounds upon which this provision in favour of the bankrupt is condemned, are thus stated in the report:—

"Your Committee feel that as the right to a certificate depends on the general conduct of the bankrupt before the Court, on the manner in which he has conducted himself as well before as since his bankruptcy, and the manner in which he has surrendered his estate and assisted his creditors in collecting his property; it is quite impossible for any other person than the Commissioner before whom the bankrupt has appeared, to judge of the real merits of the case, and, especially, to decide on the class to which a certificate should belong."

Now, with great respect for the opinions of our city friends, we are disposed to doubt the wisdom of importing into the administration of the Bankrupt Laws the distinctions of railway travelling. The late act does not in any respect alter the legal effect of a certificate. Whether the bankrupt is fortunate enough to procure a first class, or goes away with a second or a third class certificate, he is equally discharged from liability for debts incurred previously to his bankruptcy; and the distinction between a first, second, or third class certificate, being nominal and not real, will only be felt by persons who are peculiarly sensitive as to honour and character, and would be utterly disregarded by the million who fully understood the solid distinction between granting, suspending, and refusing a certificate, as heretofore practised by the Commissioners. Then, as to the appeal *supposed* to be given to the Vice-Chancellor, with respect to the class of certificate, by the 12th section,—we say supposed, for it is not quite clear that such an appeal is given,—it must be remembered, that heretofore the creditors had an appeal when a certificate was granted, but the bankrupt had no appeal when the certificate was suspended or refused, which was a palpable unfairness and injustice which we are glad to see remedied.

As the new act will probably occasion much discussion, and give rise to many questions of construction hereafter, we propose now to lay its provisions before our readers as fully as a regard for space will permit. The clauses by which the existing law is changed are printed without any material abridgment. Our readers must be content with a summary of those clauses which are merely a consolidation or re-enactment of the old law.

12 & 13 VICT. c. 106.

An Act to Amend and Consolidate the Laws relating to Bankrupts. [1st August, 1849.]

The act contains the following clauses:—

1. From and after 11th October next, "the several acts and parts of acts set forth in Schedule A., to this act annexed," to the extent

* The Schedule A. referred to in this clause, *wholly repeals* the following acts, viz.:—6 Geo. 4, c. 16; 3 & 4 W. 4, c. 47; 2 & 3 Vict. c. 29; 8 & 9 Vict. c. 48, (as to England); and the 11 & 12 Vict. c. 86. It also *partially repeals* the 1 & 2 W. 4, c. 56; 1 & 2 Vict. c. 110; 2 Vict. c. 11; 5 & 6 Vict. c. 122; 7 & 8 Vict. c. 96; and the 10 & 11 Vict. c. 102. There are several other statutes in force, how-

to which such acts or parts of acts are by such schedule expressed to be repealed, and every other act or acts, and such parts of every other act or acts as shall be inconsistent with this act, shall be repealed, except so far as the said acts or parts of acts, or any of them, whether mentioned in the said schedule or not, repeal any former act or part of an act; and except also as far as may be necessary for the purpose of supporting any proceedings taken or to be taken under and after the commencement of this act, upon any trading, act of bankruptcy, petitioning creditor's debt, fiat or other proceeding in bankruptcy before the commencement of this act, and except as to the recovery and application of any penalty for any offence which shall have been committed before the commencement of this act."

2. Short title of act,—*"The Bankrupt Law Consolidation Act, 1849."*

3. Not to extend to Scotland or Ireland.

4. Act to commence 11th October, 1849, and after that date "no fiat in bankruptcy shall be issued, but all proceedings in bankruptcy, or to found an act of bankruptcy shall, and proceedings for arrangement between debtors being traders liable to become bankrupt and creditors may be, by virtue of and according to the provisions of this act; and that all proceedings in bankruptcy, and every fiat in bankruptcy, and petition for such arrangement, depending at the commencement of this act, shall be proceeded in and brought to a conclusion under the provisions of this act: Provided that every trading, act of bankruptcy, petitioning creditor's debt, or other matter or thing, which before the commencement of this act would have authorized proceedings in bankruptcy, shall after the commencement of this act be sufficient to authorize proceedings in bankruptcy under this act, and nothing in this act contained shall render invalid any proceedings in bankruptcy, or any fiat in bankruptcy, or any petition for arrangement, depending at the commencement of this act, or any proceedings which may have been instituted or taken under or by virtue of such bankruptcy, fiat, or petition, or lessen or affect any right, title, claim, demand, or remedy which any person now has or hereafter may have under or by virtue thereof, or lessen or affect any right, title, claim, demand, or remedy which any person now has or hereafter may have upon or against any bankrupt against whom any fiat has or shall have been issued, or against any such trader who may or shall have presented such petition, except as in this act is hereafter specially provided: Provided always, that nothing in this act contained shall affect the provisions of 'the Joint-Stock Companies' Winding-up Act, 1848,' or any of the

ever, containing provisions relating to bankruptcy, which will be effected in a greater or lesser degree by the above enactment, and there is reason to apprehend will give rise to many curious questions of construction.

acts therein recited, or of any act amending such act, except so far as regards the abolition of the fiat in bankruptcy and the substitution of a petition for adjudication of bankruptcy."

5. "Where in any act of parliament, instrument, document, or other proceeding passed, executed, or made before the commencement of this act, mention shall have been or shall be made of any commission of bankruptcy or fiat in bankruptcy, such act, instrument, document, or proceeding shall be construed with reference to the proceedings under this act as if such commission or fiat had been actually issued at the time of filing a petition for adjudication of bankruptcy under this act."

Constitution of the Court.

6. "The Court of Bankruptcy shall continue to be a Court of Law and Equity for the purposes of this act, and shall continue to be a Court of Record, and the records and proceedings of every kind at the commencement of this act in the said Court in *London*, and in the several districts in the country, shall be kept as such records and proceedings in like manner in the Court so continued, and the said Court and every Commissioner thereof shall have, and use all the powers, rights, incidents, and privileges of a Court of Record, and all other rights, incidents, and privileges, as fully to all intents and purposes as the same are used and enjoyed by any of her Majesty's Courts of Law or Judges at *Westminster*, and each and every of the Commissioners for the time being acting in *London* and in the several districts in the country, shall, singly, and simultaneously, or otherwise as occasion may require, be and form the Court for every purpose under this act, or in execution of any duty which may hereafter be imposed on the Court, except where otherwise in this act specially provided."

7. Upon the next two occasions of a vacancy in the office of Commissioner in *London* the vacancies not to be filled up, and the *London* Commissioners to be reduced to four. The Chancellor to direct before whom matters to be prosecuted pending at the time of a vacancy.

8. "The Commissioners of the Court continued under this act, or any eight or more of them, of whom the senior Commissioner shall be one, may from time to time make such rules and orders as they may think fit for the better carrying this act into execution, and as regards the duties to be performed by the chief and other registrars, the accountant, master, official assignees, and clerks, and by the messengers, ushers, and other under officers of the Court, and generally for regulating the practice of the Court, and the forms of proceedings where not provided for in this act: Provided always, that no such rules or orders shall be of any force or effect until they shall have been approved by the Lord Chancellor."

9. "That the limit and extent of the district of the Court of Bankruptcy acting in *London* shall be and remain the limit and extent of such district at the time of the passing of this act, and the limit and extent of the districts of the

Courts acting in the country respectively shall be the limit and extent of such districts respectively as the same are settled and determined at the time of the passing of this act, unless and until such last-mentioned districts shall be altered as herein-after provided: Provided always, that it shall be lawful for her Majesty, with the advice of her Privy Council, from time to time to alter the limit and extent of such last-mentioned districts, or any of them, or to increase the number of the same, as to her Majesty, with the advice aforesaid, shall seem fit."

Sittings of the Court.

10. "That the Court shall sit for the despatch of business daily throughout the year, (Sunday, Christmas Day, Good Friday, Monday and Tuesday in Easter week, and days appointed for public fast or thanksgiving, excepted,) and in *London*, and in each district in the country, the Commissioners of the Court, or such of them as occasion may require, shall attend for that purpose: Provided always, that in each district in the country in which there is only one Commissioner of the Court, such Commissioner, or in his absence from illness or other reasonable cause, the registrar of the Court in such district, shall so attend; provided also, that during the time appointed by order of the Lord Chancellor for vacations in the several offices of the High Court of Chancery, the Commissioners of the Court in *London*, and in the several districts in the country respectively, shall have full power and authority to regulate the sittings of the Court, and appoint the attendance of such of them as Vacation Commissioner or Commissioners for that purpose as shall appear fit and necessary for the due administration of justice in the said Court."

11. The Lord Chancellor may attach the Commissioners, &c. acting in the country to such districts as he shall think fit.

Primary and Appellate Jurisdiction.

12. "The Court, in the exercise of its primary jurisdiction by virtue of this act, shall have superintendence and control in all matters of bankruptcy, and shall hear, determine, and make order in any matter of bankruptcy whatever, so far as the assignees are concerned, relating to the disposition of the estate and effects of the bankrupt, or of any estate or effects taken under the bankruptcy and claimed by the assignees for the benefit of the creditors, or relating to any acts done or sought to be done by the assignees in their character of assignees by virtue or under colour of the bankruptcy, and also in any matter of bankruptcy whatever as between the assignees and any creditor or other person appearing and submitting to the jurisdiction of the Court; and also in any application for a certificate of conformity, and in any other matter (whether in bankruptcy or not) where the Court by virtue of this act has jurisdiction over the subject of the petition or application, save and except as may be by this act otherwise specially provided, and subject in

all cases to an appeal to such one of the Vice-Chancellors of the High Court of Chancery as the Lord Chancellor shall from time to time be pleased to appoint to sit in bankruptcy: Provided always, that if no such appeal shall be entered within 21 days from the date of any decision or order of the Court, and be thereafter duly prosecuted, every such decision or order shall be final; and that every appeal shall be subject to such regulation in regard to deposit of costs as shall by any general rule or order to be made in pursuance of this act be directed."

13. Vice-Chancellor sitting in bankruptcy to be a Court of Record, &c.

14. Appeals from Commissioners to be brought on by petition, motion, or special case.

15. Vice-Chancellor may direct question of fact to be tried by a jury in town, or on circuit in the form provided by 8 & 9 Vict. c. 107, and new trial may be moved for in Court from which writ of summons issued.

16. Decisions and orders of Vice-Chancellor to be subject to appeal to the Lord Chancellor "on matters of law or equity, or on the refusal or admission of evidence," only.

17. Appeals to be entered in office of chief registrar.

18. Appeal to the House of Lords by consent or under direction of the Lord Chancellor.

19. Lord Chancellor, during illness or absence of any Commissioner, may direct another Commissioner to act.

20. Any London Commissioner may act for the senior Commissioner in his absence.

21. Courts to be auxiliary to each other for proof of debts and taking examinations.

22. Power of Commissioners named in fiat issued prior to 11th Nov. 1842, to cease, and fiats to be removed into Court by general rule to be made.

23. Proceedings, &c., in the country to be transmitted to the chief registrar.

24. Warrants to be under hand and seal of Commissioner, and summons under his hand, or in his absence, under the hand of the Registrar, and under seal of Court.

25. Records and proceedings to be sealed with seal of the Court.

Registrars of the Court.

26. Number of registrars acting in London to be reduced to four.

27. In case of illness or absence of Commissioner, registrar may act for him; but he is not to exercise the power of commitment, or to determine any disputed adjudication, or the allowance or suspension of any certificate.

28. Court may direct Registrar to take proof of debts.

29. Chief registrar to provide seals, &c.

30. Registrars may act for each other.

Accountant in Bankruptcy.

31. Accountant to have superintendence of funds, &c.; salary to be in lieu of all fees.

32 and 33. Accounts to be charged to "The

Bankruptcy Fund Account," and chief registrar's Account, subject to order of Lord Chancellor.

34 and 35. Securities may be purchased and sold by order of the Lord Chancellor.

36. Returns to be made to Parliament by the accountant at specified periods.

Master in Bankruptcy.

37. Duties of Master and appropriation of fees received by him.

Official Assignees.

38, 39, and 40. Official assignees to give security; their duty: To act as sole assignees till creditors' assignees chosen; and may sell or otherwise dispose of property of a perishable nature. Not to interfere with creditors' assignees in choice of solicitor.

41. Official assignee not personally liable for acts done in execution of his duty, and if any action shall be brought against the official assignee, either solely or jointly with the creditor's assignee, in respect of such matters, it shall be lawful for a Judge of the Court in which the same shall be brought, upon application of the official assignee, and upon an affidavit of facts, to set aside the proceedings in such action so far as the official assignee is concerned, with such costs, or without costs, as to the Judge shall seem meet.

42 and 43. Court may appoint another official assignee to act in any bankruptcy, on death or removal; and may appoint official assignee to act with existing assignees under the old fiat.

44. Court to allow reasonable remuneration to official assignee.

45. Returns by official assignees at stated periods, and in a form prescribed by schedule B.

Messengers in Bankruptcy.

46. Messengers acting in London to be reduced to four as vacancies occur.

47. All officers and servants of the Court exempt from serving on juries or parochial offices.

Stamps in lieu of Fees.

48. "That every document enumerated in the schedule C. to this act annexed^b shall, from

^b The documents enumerated in the schedule referred to in this clause, are, 1st. Petition for adjudication, arrangement, or certificate of arrangement. Duty, 10s. 2ndly. Declaration of insolvency, 2s. 6d. 3rdly. Summons of trader debtor, 2s. 6d. 4thly. Admission or deposition of trader debtor, 2s. 6d. 5thly. Bond with sureties, 5s. 6thly. Search for proceeding, 1s., and lastly, *Allocatur for costs* on the following scale:

Bill not exceeding £5, duty, 1s. 6d.			
Exceeding £5 and not exceeding £10	0	2	6
" 10	"	"	20 0 5 0
" 20	"	"	30 0 7 6
" 30	"	"	50 0 10 0
" 50	"	"	100 0 15 0
" 100	"	"	150 1 0 0
" 150	"	"	200 1 10 0
" 200	"	"	300 2 0 0
" 300	"	"	500 3 0 0
" 500	"	"	5 0 0

and after the commencement of this act, and in lieu of all fees thereupon, be printed or written upon vellum, parchment, or paper bearing the stamp duty set opposite to such documents respectively in such schedule, and having the word "Bankruptcy" impressed on every such stamp: Provided always, that where any such document shall consist of more than one sheet, only the first sheet thereof shall be impressed with such stamp."

49. Commissioners of Inland Revenue to give necessary directions for carrying into effect provision as to stamps, to keep separate accounts, and pay over monies received to Bank of England.

50. Commissioners of Inland Revenue may appoint persons for sale and distribution of stamps, and make allowance for spoiled stamps.

51. Provisions of former acts relating to stamps to be applied to stamps provided under this act.

52. "No document which by this act is required to have a stamp impressed thereon shall be received or filed or be used in relation to any proceeding in the Court, or be of any validity for any purpose whatever, unless or until the same shall have a stamp impressed thereon: Provided always, that if at any time it shall appear that any such document which ought to have had a stamp impressed thereon, has, through mistake or inadvertence, been received or filed or used without having such stamp, it shall be lawful for the Court, if it think fit, to order that such stamp shall be impressed thereon, and thereupon, when a stamp shall have been impressed on such document in compliance with such order, such document, and every proceeding in reference thereto, shall be as valid and effectual as if such stamp had been impressed thereon in the first instance."

53. Office copies to be charged for at the rate of three halfpence per folio of 90 words.

54. Official assignee to pay to "the Chief Registrar's Account," a sum not less than one-eighth of a pound, nor more than 5*l.* per cent. on the gross produce of every estate. The sum, within such limits, to be fixed by the Senior Commissioner, with the approval of the Lord Chancellor, and may be altered from time to time with the like approval.

55. If securities in the name of accountant be insufficient to answer the claims of the creditors, the sum taken for the purposes of this act to be deemed a debt due from the public, and made good by Parliament.

Salaries, Compensations, and Expenses.

56. Salaries now paid to Commissioners and other officers, to be hereafter paid out of "the Chief Registrar's Account," &c.

57. Compensation and annuities under former acts continued.

58. Monies paid to "Chief Registrar's Account," to be subject to orders heretofore made, or hereafter to be made, by the Chancellor or Commissioners as trustees.

59. Accounts for stationery and incidental

expenses to be audited by one of the Commissioners before payment.

Buildings for holding Courts.

60, 61, and 62. Court in Basinghall-street to vest in London Commissioners. Building to continue to be called the Court of Bankruptcy, and to be under the direction of the London Commissioners.

63. The Chancellor may order payment of sums advanced by the Treasury for the purchase of buildings, and "Chief Registrar's Account" to be subject to orders for expenses, &c.

54. Buildings for country courts to vest in Commissioners for such courts respectively.

Persons liable to be Bankrupt.

65. Enumeration of traders liable to become Bankrupt, as in 6 Geo. 4, c. 16, s. 2, and 5 & 6 Vict. c. 122, s. 10.

66. Trader having privilege of Parliament to be dealt with as any other trader, except as to arrest during time of privilege.

Acts of Bankruptcy.

67. Departing the realm, absenting, beginning to keep house, yielding to prison, fraudulent outlawry, arrest, attachment, execution, conveyance, surrender, gift, delivery, or transfer, enumerated as acts of bankruptcy, as in 6 Geo. 4, c. 16, s. 3.

68. Conveyance of all a trader's property for the benefit of all his creditors not an act of bankruptcy, unless a petition for adjudication be filed within three months^c after execution, provided notice be given one month after execution in the *Gazette*, &c.

69. Lying in prison and escaping out of prison an act of bankruptcy, as in 6 Geo. 4, c. 16, s. 5.

70. Filing declaration of insolvency in the office of Secretary of Bankrupts, an act of bankruptcy, as in the 5 & 6 Vict. c. 122, s. 28.

71. Re-attachment of 6 Geo. 4, c. 16, s. 8, as to compounding with petitioning creditor.

72. Trader not paying, securing, or compounding for a judgment debt upon which the plaintiff might sue out execution within seven days after notice, an act of bankruptcy on the eighth day.

73. Trader disobeying order of any Court of Equity, or in bankruptcy or lunacy, personally served seven^d days before day appointed therein for payment, an act of bankruptcy.

74. Filing petition in Insolvent Debtors' Court in England an act of bankruptcy. (See 1 & 2 Vict. c. 110, s. 39.)

75. Filing petition in Insolvent Debtors' Court in India an act of bankruptcy. (See 11 & 12 Vict. c. 21).

76. "Filing of a petition by any such trader

^c The corresponding periods fixed by the 6 G. 4, c. 16, s. 4, were respectively six months and two months.

^d These provisions are similar to those of the 5 & 6 Vict. c. 122, ss. 20 & 21, but the time is abridged from fourteen days to seven days.

for an arrangement between such trader and his creditors, under the provisions of this act with respect to arrangements between debtor and creditor under the superintendence and control of the Court, shall be accounted and adjudged conclusive evidence of an act of bankruptcy committed by such trader at the time of filing such petition, provided a petition for adjudication of bankruptcy shall be filed against him within two months after such petition for arrangement shall have been dismissed: Provided also, that no adjudication shall be made on any such act of bankruptcy, unless and until after such petition for arrangement shall have been dismissed."

77. Trader having privilege of parliament, and not paying, securing or compounding to the satisfaction of a creditor, and entering appearance to action within one month, an act of bankruptcy. (See 6 Geo. 4, c. 16, s. 10; and 2 W. 4, c. 39, s. 9).

Trader Debtors' Summons.

78. "If any creditor of a trader file an affidavit in the Court in the district in which such trader shall reside, in the form specified in Schedule F. hereunto annexed, of the truth of his debt, and of the debtor, as he verily believes, being such trader, and of the delivery to such trader personally, or to some adult inmate at his usual or last known place of abode or business, of an account in writing of the particulars of his demand, with a notice thereunder requiring immediate payment thereof, in the form specified in Schedule G. annexed to this act, it shall be lawful for the Court in which such affidavit shall be filed, to issue a summons in writing, in the form contained in Schedule H. annexed to this act, calling upon such trader to appear before such Court, and stating in such summons the purpose for which such trader is called upon to appear as hereinafter provided: Provided always, that if the demand of a creditor appear by such affidavit to be due from two or more persons carrying on trade in partnership, the delivery of such account and notice to any one of the partners personally, or to some adult inmate, at his usual or last known place of abode or business, and also at the place of business of the firm, as aforesaid, shall be sufficient to authorize the Court to issue such summons against any other of such partners, as well as against the partner served personally with such account and notice."

79. Manner of proceeding upon the appearance of the trader as in 5 & 6 Vict. c. 122, but trader is required by Sched. J. to depose to a good defence upon the merits.

80. Trader not attending summons, or refusing to admit the demand, and not within seven days after personal service of the summons, paying, securing, or compounding, or giving bond for payment of sum recovered in action and costs, to be an act of bankruptcy on the 8th day, if petition filed within two months.

81. Trader signing admission and not pay-

ing, securing, or compounding within seven days, an act of bankruptcy.

82. Trader admitting part only of demand, and not paying, securing, or compounding for the sum admitted, and as to the residue paying or giving bond to pay the sum recovered and costs within seven days, an act of bankruptcy.

83. What shall be deemed a refusal to admit. Court may enlarge time for admission, (as in 5 & 6 Vict. c. 122, s. 16).

84. Admission of debt signed elsewhere than in Court, if attested by trader's attorney, to have the same effect as admission signed in Court, (as in 5 & 6 Vict. c. 112, s. 17).

85. "Where any such trader, against whom an affidavit of debt is filed by any creditor as aforesaid, shall be summoned to appear before the Court in which such affidavit shall be filed, every such creditor or trader shall have such costs as the Court in its discretion shall think fit, or the Court may direct the costs of either party of, incident to, or attendant upon such affidavit and summons, to abide the event of any action which shall have been brought or shall thereafter be brought for the recovery of such demand or any part thereof, and in such case such costs shall be costs in the cause, and recovered under the judgment and execution in such action."

86. Where creditor brings action and does not recover amount, and affidavit for such amount made without probable cause, defendant entitled to costs. Re-enactment of 5 & 6 Vict. c. 122, s. 19.

87. Body corporate or public company to be deemed to have notice of act of bankruptcy if accredited agent has notice.

88. "No person shall be liable to become bankrupt by reason of any act of bankruptcy committed more than twelve months prior to the issuing of any fiat in bankruptcy or the filing of any petition for adjudication of bankruptcy against him; and no adjudication of bankruptcy shall be deemed invalid by reason of any act of bankruptcy prior to the debt of the petitioning creditor, provided there be a sufficient act of bankruptcy subsequent to such debt."

Procedure to obtain adjudication.

89. "Proceedings to obtain adjudication of bankruptcy shall be by petition (such petition, if presented by a creditor, being in the form specified in the Schedule M. to this act annexed, and the truth thereof verified by the affidavit of the petitioner in the form specified in the Schedule N. to this act annexed, and if presented by a trader, being in the form specified in the Schedule O. to this act annexed, and the truth thereof verified by the affidavit of such trader in the form specified in the Schedule N. to this act annexed); and every such petition shall be filed of record and prosecuted as directed by this act; and from and after the filing of such petition the Court shall by virtue of this act, and without any commission, fiat, or special authority whatsoever, have

full power and authority to take such order and direction with the body of the bankrupt as mentioned in this act, as also with all his lands, tenements, and hereditaments, both within this realm and abroad, as well copy or customary hold as freehold, which he shall have in his own right before he became bankrupt, as also with all such interest in any such lands, tenements, and hereditaments as such bankrupt may lawfully depart withal, and with all his money, fees, offices, annuities, goods, chattels, wares, merchandize, and debts, wheresoever they may be found or known, and to make or order sale thereof in manner herein mentioned, or otherwise order the same for satisfaction and payment of the creditors of the bankrupt."

90. "Every petition for adjudication of bankruptcy against or by any trader liable to become bankrupt shall be filed and prosecuted in the Court within the district of which such trader shall have resided or carried on business for six months next immediately preceding the time of filing such petition, except where otherwise in this act specially provided: Provided always, that the *Senior Commissioner* shall have power, whenever he may deem it expedient, to order any petition against or by any trader to be prosecuted in any district with or without reference to the district in which the trader shall have resided or carried on business, or to consolidate the proceedings or any part thereof under two or more petitions for adjudication of bankruptcy, or to impound any petition for adjudication of bankruptcy, and the proceedings thereunder, or any part thereof, upon such terms as the *Senior Commissioner* shall think fit, or to transfer any petition for adjudication of bankruptcy, and the proceedings thereunder, and the prosecution or the further prosecution thereof, from the Court in any one district to the Court in any other district, and the Court to which any such transfer shall be made may remove the official assignee, and appoint a new official assignee to any such bankruptcy." [Orders by senior Commissioner to be in forms specified in schedules P., Q., R.]

91. Requisite amount of petitioning creditor's debt, re-enacting 5 & 6 Vict. c. 122, s. 9.

92. Petition for adjudication may be made, in name of public officer of co-partnership entitled to sue in such name by 7 Geo. 4, c. 46, s. 9.

93. "Trader may petition for adjudication of bankruptcy against himself; provided always, that unless such trader shall forthwith after the filing of his petition, and before adjudication of bankruptcy thereunder, make it appear to the satisfaction of the Court that his available estate is sufficient to pay his creditors at least five shillings in the pound, clear of all charges (to be estimated by the Court) of prosecuting the bankruptcy, such petition shall be dismissed, and no further petition shall be filed by such trader in the same district without the leave of the Court first obtained for that purpose, and the adjudication on any further pe-

tition shall be subject to the like condition as aforesaid as to the available estate of the trader."

94. "Every petition for adjudication of bankruptcy presented to the Court in London shall be filed in the office of the chief registrar, and such chief registrar shall, immediately cause the same to be entered in a book to be kept by him for that purpose, to be called the General Docket Book, (which book shall be in the form contained in Schedule S.); and every such petition shall be allotted, in such manner as may be by any general rule or order made in pursuance of this act be directed, to one of the Commissioners of the Court, and it shall be transmitted forthwith to the registrar attending such Commissioner, who, when adjudication shall have been made, shall deliver to the chief registrar a duplicate of such adjudication, in order that the same may be minuted in the General Docket Book; and all petitions presented to the Court in the country districts shall be filed with the respective registrars thereof, who shall in like manner enter the same in similar docket books (one of which shall be kept in each Court,) and in districts where there is more than one Commissioner, one of such Commissioners, or one of the registrars, shall allot the petitions by ballot, or in such manner as the Commissioners of such district Court may from time to time direct."

95. "The registrars acting in the country shall transmit daily by post, to the chief registrar, copies of all entries made by them in their docket books, and of all adjudications made in the respective district Courts, and the chief registrar shall immediately on the receipt thereof cause the same to be entered in the general docket book; and when any fiat or petition in prosecution in any of the Courts, or any adjudication of bankruptcy made therein, shall have been superseded, dismissed, or annulled, or when the time allowed to any petitioning creditor for proceeding shall have been extended, the registrar in attendance on the Commissioner making such order shall forthwith transmit a certified copy thereof to the chief registrar, who will cause the same to be minuted in the general docket book.

96. "If the petitioning creditor in any petition for adjudication of bankruptcy shall not proceed and obtain adjudication within three days after his petition shall have been filed, or within such extended time as shall be allowed by the Court, the Court may at any time within 14 days then next following, upon the application of any other creditor to the amount required to constitute a petitioning creditor, proceed to adjudicate on such petition, upon the proof of the debt of such creditor, and of the other requisites to support such petition (except the debt of the petitioning creditor); but if neither the petitioner nor any other creditor shall within such 14 days or within such extended time as may be granted by the Court for that purpose, apply to the Court to adjudicate upon such petition, no further proceedings shall be taken thereon."

97. Petitions may be presented against one or more partners in a firm, and petitions against two or more persons may be dismissed as to one or more, without affecting the rest. (See 6 G. 4, c. 16, s. 16.)

98. In cases of a second or other petition against one or more members of a firm, the same shall be prosecuted in the Court in which the first was prosecuted and form part of the proceedings thereunder, or the senior Commissioner may direct that they be proceeded in separately or in conjunction. (6 Geo. 4, c. 16, s. 17.)

99. When it appears probable that a trader against whom a petition has been filed is about to quit England or to remove or conceal his goods with intent to defraud his creditors, he may be arrested and his goods seized; but trader so arrested may apply for his discharge forthwith, or that his goods be delivered up. (See 5 & 6 Vict. c. 122, ss. 5 and 6.)

100. Court may before adjudication summon persons to prove trading and act of bankruptcy (as in 6 G. 4, c. 16, s. 24.)

Adjudication and securing Bankrupt's Property.

101. "The Court, under a petition filed by a creditor, shall, upon proof of the petitioning creditor's debt, and of the trading and act of bankruptcy of the person against whom such petition is filed, adjudge such person bankrupt; or if in case of the failure of the petitioning creditor to proceed and obtain adjudication within three days after his petition shall have been filed, or within such extended time as may be allowed by the Court, another creditor shall apply for adjudication upon such petition, then upon such application, and proof of such creditor's debt, and of the trading and act of bankruptcy of the person against whom such petition is filed, the Court shall adjudge such trader bankrupt; and, under a petition filed by a trader, the Court, upon application of such trader, and upon proof of the trading and of the filing a declaration of insolvency, and of the sufficiency of his available estate to the extent required by this act, shall adjudge such trader bankrupt."

102. Forthwith after adjudication, official assignee to be appointed.

103. In case petitioning creditor's debt be insufficient, Court may proceed upon the application of any other creditor whose debt is sufficient. (See 6 Geo. 4, c. 16, s. 18.)

104. "Before notice of any adjudication of bankruptcy shall be inserted in the *London Gazette*, and at or before the time of putting in execution any warrant of seizure which shall have been granted upon such adjudication, a duplicate of such adjudication shall be served on the person adjudged bankrupt, personally, or by leaving the same at the usual or last known place of abode or place of business of such person, or his usual place of resort, and such person shall be allowed seven days, or such extended time, not exceeding fourteen days in the whole, as the Court shall think fit, from

the service of such duplicate to show cause to the Court against the validity of such adjudication; and if such person shall within such time show to the satisfaction of the Court that the petitioning creditor's debt, trading, and act of bankruptcy, upon which such adjudication has been grounded, or any or either of such matters, are insufficient to support such adjudication, and upon such showing, no other debt, trading, and act of bankruptcy sufficient to support such adjudication, or such of the said last-mentioned matters as shall be requisite to support such adjudication in lieu of the petitioning creditor's debt, trading, and act of bankruptcy, or any or either of such matters, which shall be deemed insufficient in that behalf, as the case may be, shall be proved to the satisfaction of the Court, the Court shall thereupon order (in the form specified in Appendix U. or to the like effect) such adjudication to be annulled, and the same shall by such order be annulled accordingly." If at the expiration of such time no cause be shown to the satisfaction of the Court, adjudication to be gazetted and public sittings appointed as directed by 5 & 6 Vict. c. 122, s. 23. Adjudication may, with bankrupt's consent, be advertised before the expiration of the time allowed for showing cause, as in 5 & 6 Vict. c. 122, s. 33.

105. Bankrupt to deliver up his books of account to the official assignee upon oath, to attend assignees, to be at liberty to inspect books, &c. After allowance of certificate to attend assignees in settling accounts. Allowance for his attendance. (See 6 Geo. 4, c. 16, s. 116.)

106. Search warrants may be granted as directed by 5 & 6 Vict. c. 122, s. 30.

107. No action to be brought against persons acting in obedience to warrant of the Court. (See 6 Geo. 4, c. 16, s. 31.)

108. Proof in such action that defendant is petitioning creditor sufficient to render him liable. (6 Geo. 4, c. 16, s. 32.)

109. Messenger may break open bankrupt's doors and seize upon his body or property, as in 6 Geo. 4, c. 16, s. 27.

110. Execution of warrant in Ireland, as in 6 Geo. 4, c. 16, s. 28.

111. Execution of warrant in Scotland, as in 6 Geo. 4, c. 16, s. 30.

112. "If the bankrupt be not in prison or custody at the date of the adjudication, he shall be free from arrest or imprisonment by any creditor in coming to surrender, and after such surrender during the time by this act limited for such surrender, and for such further time as shall be allowed him for finishing his examination, and for such time after finishing his examination until his certificate be allowed as the Court shall from time to time by indorsement upon the summons of such bankrupt think fit to appoint; and whenever any bankrupt is in prison or in custody under any process, attachment, execution, commitment, or sentence, the Court may, by warrant directed to the person in whose custody he is confined, cause him to be brought before it at any sitting,

either public or private, and if he be desirous to surrender he shall be so brought up, and the expense thereof shall be paid out of his estate, and such person shall be indemnified by the warrant of the Court for bringing up such bankrupt; and where any person who has been adjudged bankrupt, and has surrendered and obtained his protection from arrest, is in prison or in custody for debt at the time of his obtaining such protection, the Court may, except in the cases next hereinafter-mentioned, order his immediate release, either absolutely or upon such conditions as it shall think fit: Provided always, that the Court shall not order such release where it shall appear by any judgment, order, commitment, or sentence under which the bankrupt is in prison or in custody, or by the record or entry of any such judgment, order, commitment, or sentence, and the pleadings or proceedings previously thereto, that he is in prison or in custody for any debt contracted by fraud or breach of trust, or by reason of any prosecution against him whereby he had been convicted of any offence, or for any debt contracted by reason of any judgment in any proceeding for breach of the revenue laws, or in any action for breach of promise of marriage, seduction, criminal conversation, libel, slander, assault, battery, malicious arrest, malicious trespass, maliciously suing out a fiat in bankruptcy, or maliciously filing or prosecuting a petition for adjudication of bankruptcy: Provided also, that such release shall in no wise affect any rights of the creditor at whose suit the bankrupt may be in prison or in custody against the bankrupt, except the right of detaining him in prison or in custody whilst protected from imprisonment by order of the Court.*

113. Bankrupt if arrested to be discharged on producing protection, and officer detaining bankrupt subject to penalty, as in 6 Geo. 4, c. 16, s. 117, and 5 & 6 Vict. c. 122, s. 23.

114. Petitioning creditor to proceed at his own costs until choice of assignees, re-enacting 6 Geo. 4, c. 16, s. 14.

115. No fiat to be superseded, or petition dismissed, by reason only of concert. (See 1 & 2 W. 4, c. 56, s. 42, and 5 & 6 Vict. c. 122, s. 8.)

116. Court may proceed, notwithstanding death of bankrupt.

117. Court may summon and examine bankrupt. (6 Geo. 4, c. 16, s. 36, and 8 & 9 Vict. c. 48.)

118. Court may summon and examine bankrupt's wife, as in 6 Geo. 4, c. 16, s. 37.

119. "If in any case it shall be proved to the satisfaction of the Court that any bankrupt is keeping out of the way, and cannot be personally served with a summons, and that due pains have been taken to effect such personal service, or that there is probable cause for believ-

ing that such bankrupt is about to quit England, or to remove or conceal any of his goods or chattels, unless he be forthwith apprehended, it shall be lawful for such Court, by warrant, to authorize and direct any person or persons it shall think fit to apprehend and arrest such bankrupt, and bring him before the Court, to be examined in like manner as a bankrupt appearing upon a summons."

120. Court empowered to summon persons suspected of having bankrupt's property in possession, or indebted to bankrupt, as in 6 Geo. 4, c. 16, s. 33.

121. Service of summons where person summoned keeps out of the way, as in 5 & 6 Vict. c. 122, s. 80.

122. Power to examine persons summoned or present at any sitting. 6 Geo. 4, c. 16, s. 34.

123. "If any such person examined as last aforesaid shall, in and by his examination, signed and subscribed as aforesaid, and also in and by a separate writing in the form contained in the schedule X. to this act annexed, admit that he is indebted to the bankrupt in any sum of money upon the balance of accounts, it shall be lawful for the Court, if it think fit, to order (in the form contained in schedule Y. to this act annexed, or to the like effect) that such person shall forthwith, or at such time and in such manner as to the Court may seem expedient, pay the amount so admitted, in full discharge thereof to the official assignee, together with the costs of and incident to the summons of such person, if the Court think fit to award costs, or the Court may, if it think fit, in the said form contained in schedule Y. to this act annexed, order the official assignee to pay the costs of the person summoned out of the estate of the bankrupt; and every such order shall have the effect of a judgment in her Majesty's Superior Courts of Common Law, and may be enforced accordingly: Provided always, that no such order shall be made unless there be present some attorney of one of the Superior Courts on behalf of the person making such admission, expressly named by him, or, upon his refusal to name such attorney, named by the Court to act upon his behalf, to inform him of the effect of such admission, before the same is signed and subscribed as aforesaid, and that such attorney do sign his name as a witness to such admission in the form contained in the schedule Y. to this act annexed: Provided also, that if part only of the sum actually due be so admitted, the residue may be recoverable in the same manner in all respects as if no such admission or order had been made."

124. Court may order letters directed to the bankrupt, to be redirected or delivered to official assignee. (See 10 and 11 Vict. c. 85, s. 11.)

Power over certain property after adjudication.

125. Goods in the possession, order, or disposition of the bankrupt, to be deemed his property, as in 6 Geo. 4, c. 16, s. 72, with proviso excepting assignments of vessels under 8 & 9 Vict. c. 89.

* This clause embodies provisions contained in 6 Geo. 4, c. 16, ss. 117 and 119; 5 & 6 Vict. c. 122, s. 23, and 11 & 12 Vict. c. 86, with some alterations.

126. Power of Court over conveyances and assignments, as in 6 Geo. 4, c. 16, s. 73.

127. Court may proceed when the bankrupt by fraud makes himself accountable to the Crown. (See 6 Geo. 4, c. 16, s. 71.)

128. When bankrupt is beneficially entitled to stock, Court may order a transfer, as in 6 Geo. 4, c. 16, s. 80.

129. Distress not to be available for more than one year's rent due; the landlord to prove for the residue. (6 Geo. 4, c. 16, s. 74.)

130. Where bankrupt is trustee, the Lord Chancellor may order conveyance or assignment to another trustee. (6 G. 4, c. 16, s. 79.)

131. Titles to property sold not to be impeached, unless proceedings taken to annul and duly prosecuted. (6 Geo. 4, c. 16, s. 87.)

132. The Court, after adjudication, may order any treasurer, &c., or agent of the bankrupt to deliver all monies, &c. (See 7 & 8 Vict. c. 111, s. 18.)

Transactions not affected by Bankruptcy.

133. "All payments really and *bond fide* made by any bankrupt, or by any person on his behalf, before the date of the fiat or the filing of a petition for adjudication of bankruptcy, to any creditor of such bankrupt, and all payments really and *bond fide* made to any bankrupt before the date of the fiat or the filing of such petition, and all conveyances by any bankrupt *bond fide* made and executed before the date of the fiat or filing of such petition, and all contracts, dealings, and transactions by and with any bankrupt really and *bond fide* made and entered into before the date of the fiat or the filing of such petition, and all executions and attachments against the lands and tenements of any bankrupt *bond fide* executed by seizure, and all executions and attachments against the goods and chattels of any bankrupt *bond fide* executed and levied by seizure *and sale* before the date of the fiat or the filing of such petition, shall be deemed to be valid, notwithstanding any prior act of bankruptcy by such bankrupt committed, provided the person so dealing with or paying to or being paid by such bankrupt, or at whose suit or on whose account such execution or attachment shall have issued, had not at the time of such payment, conveyance, contract, dealing, or transaction, or at the time of so executing or levying such execution or attachment, or at the time of making any sale thereunder, notice of any prior act of bankruptcy by him committed: Provided also, that nothing herein contained shall be deemed or taken to give validity to any payment or to any delivery or transfer of any goods or chattels made by any bankrupt, being a fraudulent preference of any creditor of such bankrupt, or to any conveyance or equitable mortgage made or given by any bankrupt by way of fraudulent preference of any creditor of such bankrupt, or to any execution founded on a judgment on a warrant of attorney or *cognovit actionem* or judge's order obtained by consent given by any bankrupt by way of fraudulent preference."

134. "No purchase from any bankrupt *bond fide* and for valuable consideration, where the purchaser had notice at the time of such purchase of an act of bankruptcy by such bankrupt committed, shall be impeached by reason thereof, unless a fiat or petition for adjudication of bankruptcy shall have been sued out or filed within twelve months after such act of bankruptcy."

Warrants of Attorney, Cognovits, and Judge's Orders.

135. "Every warrant of attorney to confess judgment in any personal action, given by any bankrupt after the commencement of this act, and within two months of the filing of a petition for adjudication of bankruptcy by or against such bankrupt, and being for or in respect of (wholly or in part) an antecedent debt or money demand, and every *cognovit actionem* or consent to a judge's order for judgment given by any bankrupt, at any time after the commencement of this act, and within two months of the filing of any such petition in any action commenced by collusion with the bankrupt, and not adversely, or purporting to have been given in an action, but having been in fact given before the commencement of any action against the bankrupt, and such bankrupt being, at the time of giving such warrant of attorney, *cognovit actionem*, or consent (as the case may be), unable to meet his engagements, shall be deemed and taken to be null and void, whether the same shall have been given by such bankrupt in contemplation of bankruptcy or not."

136. Warrants of attorney and cognovits given by a trader, to be void unless the same or a copy thereof be filed within 21 days after the execution thereof, as directed by the 3 Geo. 4, c. 39.

137. Judge's order by consent given by any trader void, unless the same or a copy thereof be filed within 21 days, in like manner as warrants of attorney and cognovits.

Exemptions from Stamp Duty.

138. Deeds and other instruments relating to bankruptcy not liable to stamp duty. (See 6 Geo. 4, c. 16, s. 98.)

Assignees, their Rights and Duties.

139. Assignees of the bankrupt's estate, when and how chosen. (See 6 Geo. 4, c. 16, s. 61, and 1 & 2 Wm. 4, c. 56, ss. 20 and 36.) Court may reject or remove any person chosen as unfit.

140. Joint creditor entitled to prove under separate estate, for the purpose of voting in choice of assignees, but not to receive dividend until separate creditors paid. (6 Geo. 4, c. 16, s. 62.)

141. Personal estate to vest in assignees.

"The 3 Geo. 4, c. 39, only declared warrants of attorney not filed void as against assignees under a bankruptcy, but by this act they are void to all intents and purposes, and the same provision is extended to judge's orders to confess judgment.

(See 6 Geo. 4, c. 16, s. 63; and 1 & 2 Wm. 4, c. 56, s. 25.)

142. Real estate to vest in assignees. (See 6 Geo. 4, c. 16, s. 64; and 1 & 2 W. 4, c. 56, s. 26.)

143. Where a conveyance of the property of a bankrupt would require to be registered, the certificate of appointment of the assignees shall be registered. (See 6 Geo. 4, c. 16, s. 64; and 1 & 2 Wm. 4, c. 56, s. 27.)

144. Assignees not to take crop in any other way than bankrupt would have been entitled to do. (See 56 Geo. 3, c. 50, s. 11.)

145. Bankrupt not liable to rent or covenants in conveyances, leases, &c. and if assignees decline to determine whether they will accept conveyance, &c. any person entitled may apply to the Court of Bankruptcy. (See 6 Geo. 4, c. 16, s. 75.)

146. Vendor of estate in lands may compel assignees to elect whether they will abide by or decline the agreement for sale. (6 Geo. 4, c. 16, s. 76.)

147. Assignees may execute all powers previously vested in bankrupt. (6 Geo. 4, c. 16, s. 77.)

148. Court may order bankrupt to join in conveyances. (6 Geo. 4, c. 16, s. 78.)

149. Conditional estates granted by the bankrupt may be redeemed by the assignees. (6 Geo. 4, c. 16, s. 70.)

150. Assignees may appoint the bankrupt to superintend the management of the estate. (See 1 & 2 Wm. 4, c. 56, s. 35.)

151. Assignees to be subject to the orders of the Court. (See 6 Geo. 4, c. 16, s. 101; and 1 & 2 Wm. 4, c. 56, s. 40.)

152. In case of a member of a firm becoming bankrupt, the Court may authorise action or suit in the name of the assignees, and of the remaining partner; but partner to have notice and be at liberty to show cause. Court may direct partner to have part of the proceeds.

153. Assignees may institute or defend actions or suits, and compound for debts due to the estate, or submit disputes to arbitration. (11 & 12 Vict. c. 21, ss. 28 and 29.)

154. Reference to arbitration may be made a rule of Court. (1 & 2 Wm. 4, c. 56, s. 45.)

155. If fiat, petition or adjudication be annulled, persons from whom the assignees have recovered, or who have *bona fide* paid the assignees, discharged from claims by the bankrupt. (6 Geo. 4, c. 16, s. 94.)

156. If assignee indebted to bankrupt's estate become bankrupt, his certificate shall not discharge his future effects in respect of such debt. (6 Geo. 4, c. 16, s. 105.)

157. Suits not to abate by death or removal of assignees. (6 Geo. 4, c. 16, s. 67.)

158. If assignees commence action before time allowed to dispute the bankruptcy, debtor to estate may pay money into Court. (6 Geo. 4, c. 16, s. 93; and 5 & 6 Vict. c. 122, s. 26.)

159. Limitation of actions. Plea of general issue. Costs. (See 6 Geo. 4, c. 16, s. 44; and 5 & 6 Vict. c. 97, s. 2.)

Bankrupt's last Examination.

160. "The bankrupt shall prepare such ba-

lance sheet and accounts, and in such form as the Court shall direct, and shall subscribe such balance sheet and accounts, and file the same in Court, and deliver a copy thereof to the official assignee, ten days at least before the day appointed for the last examination, or the adjournment day thereof for that purpose; and such balance sheet and accounts, before such last examination, may be amended from time to time as occasion shall require, and such Court shall direct; and the bankrupt shall make oath of the truth of such balance sheet and accounts, whenever he shall be duly required so to do; and the last examination of the bankrupt shall in no case be passed unless his balance sheet shall have been duly filed as aforesaid; and the Court may, on the application of the assignee, or of the bankrupt, make such allowance out of the estate of the bankrupt for preparation of such balance sheet and accounts, and to such person as the Court shall think fit, in any case in which it shall be made to appear to the satisfaction of the Court, from the nature of the accounts or other good cause, that the bankrupt required assistance in that behalf."

161. Bankrupt apprehended by warrant upon conforming in all things to have the same benefit as if he voluntarily surrendered. (See 6 Geo. 4, c. 16, s. 117.)

162. Court may adjourn last examination *sine die*, and grant or refuse protection.

163. If bankrupt in prison or custody, Court may appoint a person to attend him with books, papers, &c. to enable him to prepare balance sheet. (6 Geo. 4, c. 16, s. 119.)

Proof of Debt and payment in Full.

164. When and how debts may be proved. By corporations. Examination of creditor on oath, *videlicet*, or otherwise, at discretion of the Court, as in 6 Geo. 4, c. 16, s. 46.

165. *Bona fide* creditors in respect of debts contracted after act of bankruptcy may prove. 6 Geo. 4, c. 16, s. 47.

166. Payment of assessed taxes due by bankrupt. See 59 Geo. 3, c. 118, s. 1.

167. If bankrupt be an officer of friendly society and have money belonging to society in his hands, Court may order payment thereof before any of his other debts are satisfied. See 4 & 5 W. 4, c. 40, s. 12.

168. Court may order three months' wages or salary to clerks or servants, as in 5 & 6 Vict. c. 122, s. 28.

169. Court may order wages not exceeding 40s. to labourer or workman, as in 5 & 6 Vict. c. 122, s. 29.

170. Apprentices to bankrupts discharged from their indentures, and the Court may order any sum to be paid in respect of apprentices fees. (6 Geo. 4, c. 16, s. 49.)

171. Mutual debts and credits may be set off, notwithstanding prior act of bankruptcy, as in 6 Geo. 4, c. 16, s. 50.

172. Debts not payable at the time of bankruptcy may be proved, deducting rebate of interest. (6 Geo. 4, c. 16, s. 51.)

173. Sureties and persons liable for the

debts of a bankrupt may prove after having paid such debts. (6 Geo. 4, c. 16, s. 52.)

174. Obligees in bottomry or respondentia bonds, and assured in policy of insurance, admitted to claim, and after loss to prove. (6 Geo. 4, c. 16, s. 53.)

175. Annuity creditor admitted to prove. (6 Geo. 4, c. 16, s. 54.)

176. Sureties for payment of annuities granted by the bankrupt in what manner to come in and prove under the bankruptcy. (6 Geo. 4, c. 16, s. 55.)

177. Debt contingent at the time of the bankruptcy to be provable for the value thereof, ascertained by the Court, or if the value not ascertained before the contingency has happened then after the contingency has happened amount of debts may be proved. (6 Geo. 4, c. 16, s. 56.)

178. Liability contingent at the bankruptcy may be admitted to claim, and after contingency has happened and the demand been ascertained, demand may be proved.

179. On bankruptcy of agent intrusted with goods, but which have been pledged by him, owner of the goods may prove for amount paid to redeem or for value of goods if unredeemed. (See 5 & 6 Vict. c. 39, s. 7.)

180. Interest upon debts when provable though not reserved or agreed for. (See 6 Geo. 4, c. 16, s. 57, and 3 & 4 W. 4, c. 42, s. 28.)

181. Plaintiff or defendant obtaining judgment enabled to prove for costs, &c. (6 Geo. 4, c. 16, s. 58.)

182. Proving debt to be an election not to proceed against the bankrupt by action. (6 Geo. 4, c. 16, s. 59.)

183. Court may expunge proof of any debts which after investigation do not appear to be due. Persons requiring investigation to sign undertaking for costs. Application may be made in first instance to Vice-Chancellor, or either party may appeal from the decision of the Court of Bankruptcy. (See 6 Geo. 4, c. 16, s. 60.)

184. Creditors having security not to receive more than other creditors.

Audit and Dividend.

185. Appointment of sitting for audit. (6 Geo. 4, c. 16, s. 106, and 5 & 6 Vict. c. 122, s. 27.)

186. Court may direct money to be vested in exchequer bills. (6 Geo. 4, c. 16, s. 103.)

187. Method of making dividends. (6 Geo. 4, c. 16, s. 107; and 5 & 6 Vict. c. 122, s. 27.)

188. Final dividend within 18 months, except where suit depending or estate outstanding. Outstanding debts may be sold by the assignees after a certain time, under the order of the Court. (See 6 Geo. 4, c. 16, s. 109.)

189. Debtor and creditor account to be furnished by official assignee to creditors' assignees before final dividend. (5 & 6 Vict. c. 122, s. 55.)

190. No action to be brought for dividends, but the remedy to be by application to the Court. (6 Geo. 4, c. 16, s. 111.)

191. Unclaimed dividends to be paid into the bank to the credit of the Accountant in Bankruptcy, and carried to "Unclaimed Dividend Account." (6 Geo. 4, c. 16, s. 110, and 5 & 6 W. 4, c. 29, s. 6.)

192. How unclaimed dividends in the hands of assignees to be disposed of. (5 & 6 W. 4, c. 29, s. 7; and 6 & 7 W. 4, c. 27, s. 7.)

193. Bank of England to receive from assignees, and give a receipt for any sum mentioned in a certificate of the accountant in bankruptcy.

The clauses relating to arrangements between debtors and creditors under the superintendence of the Court, as well as the arrangements by deed with a power of reference to the Court, are all novel, and must be laid before our readers without abridgment. These sections, therefore, with those relating to the bankrupt's allowances and certificate, as well as those relating to evidence, costs, and offences against the Bankruptcy Laws, must stand over for lack of space until our next number.

ABOLITION OF DISCOUNT ON STAMP DUTIES.

TAXES ON THE PROFESSION.

It is stated in Mr. Tilsley's Treatise on the Stamp Laws, (page 273,) that an allowance has at all time been granted under the authority of some enactment, on the payment of money for stamps of a certain amount, or for duties collected. All such allowances as were in existence on the passing of the Stamp Act of 1804, (44 G. 3, c. 98,) were by that act repealed, and others granted in lieu as set forth in the schedule.

This allowance or discount was 17.10s. per cent. on stamp duties amounting to 30l. or upwards paid for at one and the same time. The accounts of this branch of the revenue were no doubt simplified by this encouragement to purchase a stock of stamps, and it afforded a source of some emolument, as well to solicitors and proctors, as to law stationers.

By a return made to an order of the House of Commons, on the motion of Mr. Mullings, we find that the allowances on the purchase of stamps amounted in the year 1846, to 46,801l.; in 1847, to 47,875l.; and in 1848, to 43,568l.

One of the acts passed on the 1st instant repeals the act by which these allowances were made, and abolishes the discount, except on stamps not exceeding 10l.

May we hope that this saving of 40,000l.

a year will be credited in account with the solicitors and proctors, and their certificate duty reduced in proportion? If this be not intended, the repeal of the discount will at least afford an additional reason for the repeal of that unjust and anomalous tax.

NOTICES OF NEW BOOKS.

A Selection of Leading Cases in Equity, with Notes. By FREDERICK THOMAS WHITE and OWEN DAVIES TUDOR, Esqrs., Barristers-at-Law. London: A. Maxwell & Son. 1849. Pp. 640, xxiv.

OUR readers are well acquainted with the valuable collection of Leading Cases, principally taken from the Reports of the Common Law Courts, by the late Mr. John William Smith, the several editions of which we have from time to time fully noticed. The present authors, observing the great success of that work, very reasonably inferred that a similar selection from the Leading Cases decided in Courts of Equity would be acceptable to the profession, and they have accordingly compiled the work before us. They state in their preface that—

“Each of the cases chosen will, it is believed, be found either to be frequently referred to in practice, or to enumerate clearly, for the first time, some important principle of equity.

“A chronological arrangement of the cases has not been observed, because it has been in the present, and may be in a subsequent volume, found useful to print together cases on the same subject, decided at different periods.

“The notes, or abstracts prefixed to the cases, have occasionally, when inaccurate or defective, been altered; and, in some instances, the arguments and judgment in the same case are taken from different reports. Thus, in the well-known case of *Fox v. Mackreth*, the arguments are taken from Brown's Chancery Cases, and the judgment from Cox's Reports; and in the celebrated case of *Garth v. Cotton*, (a complete report of which is not to be found elsewhere), the arguments are taken from two different places in Vesey Senior's Reports, the judgment from Dickens' Reports, and the decree from Atkyns' Reports.

“In the notes an attempt has been made to develop the principles laid down or acted upon in the cases, and to collect the recent authorities; but, as the nature of the work would not permit that the notes should be complete essays upon different subjects treated of, they have been principally confined to the points decided in the cases, to which, in fact, they are only intended to be subsidiary.

“It will be seen, that, in the notes, some cases of importance are stated at considerable

length, and that, when it was convenient or practicable, the very words of the Judges have been preserved.”

The cases contained in the present volume are thirty-one in number, and it may be useful to the reader, and show the great importance and utility of the work, to add to the name of each case the general purport of the doctrines or principles of equity thereby decided.

1. *Ackroyd v. Smithson*, 1 Bro. C. C. 503. Resulting trust on failure of the purposes for which conversion had been directed.

2. *Aleyn v. Belchier*, 1 Eden, 132. Fraud upon a power.

3. *Ancaster, Duke of, v. Mayer*, 1 Br. C. C. 454. Primary liability of personal estate to the payment of debts.

4. *Chesterfield, Earl of, v. Sir Abraham Janssen*, 2 Ves. 125. Post obit securities—Catching bargains with heirs expectant and reversioners—Confirmation.

5. *Cuddee v. Rutter*, 5 Vin. Ab. 538, pl. 21. Specific performance of agreements relating to personal property.

6. *Dering v. Earl of Winchelsea*, 1 Cox, 318. Contribution between co-sureties.

7. *Dyer v. Dyer*, 2 Cox, 92. Purchase in the name of a son—Advancement.

8. *Elibank, Lady, v. Montolieu*, 5 Ves. 737. Wife's equity to a settlement.

9. *Elliot v. Merryman*, Barnardiston, 78. Liability of a purchaser to see to the application of his purchase-money.

10. *Ellison v. Ellison*, 6 Ves. 656. Voluntary trusts.

11. *Fletcher v. Ashburner*, 1 Bro. C. C. 497. Conversion of real estate into personality.

12. *Fox v. Mackreth*, 2 Bro. C. C. 40; 2 Cox, 320. Purchase by a trustee for sale.

13. *Garth v. Sir J. H. Cotton*, 1 Ves. 524, 546; 1 Dick. 183. Equitable waste.

14. *Glenorchy, Lord, v. Bosville*, Cas. temp. Talbot, 3. Executed and executory trusts.

15. *Hulme v. Tenant*, 1 Bro. C. C. 16. Wife's separate property.

16. *Keech v. Sandford*, Select Cases in Chancery, 61. Renewal of a lease by a trustee.

17. *Lake v. Craddock*, 3 P. Wms. 158. Joint purchasers—Tenants in common in equity.

18. *Lake v. Gibson*, 1 Eq. Ca. Ab. 290, pl. 3. Joint purchasers.

19. *Legg v. Goldwire*, Cas. temp. Talbot. Marriage articles.

20. *Lester v. Foxcroft*, 1 Colls's P. C. 108. Part performance of a parol contract respecting land.

21. *Mackreth v. Symmons*, 15 Ves. 329. Vendor's lien for unpaid purchase-money.

22. *Marsh v. Lee*, 2 Ventris, 337. Tacking incumbrances.

23. *Murray v. Lord Elibank*, 10 Ves. 84, 13 Ves. 1. Right of children to settlement.

24. *Noga v. Mordant*, 2 Vern. 581. Election under devise and settlement.

25. *Pusey v. Pusey*, 1 Vern. 273. Specific delivery up of chattels.

26. *Russel v. Russel*, 1 Bro. C. C. 269. Equitable mortgage by deposit of title-deeds.

27. *Somerset, Duke of, v. Cookson*, 3 P. Wms. 389. Specific delivery up of chattels.

28. *Strathmore, Countess of, v. Bowes*, 1 Ves., jun., 22. Fraud on marital rights.

29. *Streetfield v. Streetfield*, Cas. temp. Talb. 176. Election under settlement and devise.

30. *Tollet v. Tollet*, 2 P. Wms. 489. Defective execution of a power aided.

31. *Ward v. Turner*, 2 Ves. 431. *Donatio mortis causa*.

As an example of the notes, we select the following from the case of *Fox v. Mackreth*, 2 Bro. C. C. 40, 2 Cox, 320, relating to the disabilities not only of solicitors but of Barristers, to purchase property from their clients:—

"A solicitor is not incapable of contracting with or purchasing from his client; but inasmuch as the parties stand in a relation which gives, or may give, the solicitor an advantage over the client, the onus lies on the solicitor to prove that the transaction was fair: *Montesquieu v. Sandys*, 18 Ves. 302; *Cane v. Lord Allen*, 2 Dow. 289; *Champion v. Rigby*, 1 Russ. & M. 839; *Edwards v. Meyrick*, 2 Hare, 60. In the case of *Gibson v. Jeyes*, 6 Ves. 266, where Jeyes, an attorney, sold an annuity to his client, this subject was much considered by Lord Eldon: 'An Attorney,' says his Lordship, 'buying from his client, can never support it, unless he can prove that his diligence to do the best for the vendor has been as great as if he was only an attorney dealing for that vendor with a stranger. That must be the rule. If it appears that in that bargain he has got an advantage by his diligence being surprised, putting fraud and incapacity out of the question, which advantage, with due diligence, he would have prevented another person from getting, a contract under such circumstances shall not stand. The principle so stated may bear hard in a particular case, but I must lay down a general principle, that will apply to all cases; and I know of none short of that, if the attorney of the vendor is to be admitted to bargain for his own interest, where it is his duty to advise the vendor against himself.' And in another part of his judgment his Lordship observes, 'If he will mix with the character of attorney that of vendor, he shall, if the propriety of the contract comes in question, manifest that he has given his client all that reasonable advice against himself that he would have given against a third person. It is asked, where is that rule to be found? I answer, in that great rule of the Court, that he who bargains in matter of advantage with a person placing confidence in him, is bound to show that a reasonable use has been made of that confidence; a rule applying to trustees, attorneys, or any one else.' See also *Austin v.*

Chambers, 6 C. & F. 1, 37; *Trevolian v. Charter*, 4 L. J., N. S., Chanc. 209; S. C. 11 C. & F. 714. But the rule laid down by Lord Eldon will not apply, if the solicitor does not act in such capacity in *hac re*: *Cane v. Lord Allen*, 2 Dow. 289; *Edwards v. Meyrick*, 2 Hare, 69. In *Montesquieu v. Sandys*, 18 Ves. 302, the purchase of a reversionary interest, viz. a second presentation to a living, after the death of the then incumbent, by an attorney, from his client, though advantageous in the end, was sustained, no fraud or misrepresentation being proved, and the proposal coming from the client, both the attorney and client being ignorant of the real value.

"Although a person may have ceased to act as an attorney for another, if by means of former transactions, while holding that character, he had acquired, at the expense of his client, a knowledge of the value of his property which the client had not, he will not be able to sustain any contract relative to such property, if he concealed from his former client the knowledge so obtained: *Cane v. Lord Allen*, 2 Dow. 294; *Montesquieu v. Sandys*, 18 Ves. 308; *Esparto James*, 8 Ves. 352. If, however, such knowledge were communicated to the former client by the attorney, the parties would be placed upon an equality, and such communication being proved, the difficulty *quoad hoc*, would be removed: *Edwards v. Meyrick*, 2 Hare, 69. So, likewise, the employment of counsel as confidential legal adviser disables him from purchasing for his own benefit charges on his client's estates, without his permission; and although the confidential employment ceases, the disability continues as long as the reasons on which it is founded continue to operate. Thus, in *Carter v. Palmer*, 1 Dru. & Walsh, 792; 8 C. & F. 657, C., a barrister, who had been for several years confidential and advising counsel to P., and had by reason of that relation acquired an intimate knowledge of his property and liabilities, and was particularly consulted as to a compromise of securities given by P. for a debt which C. considered not to be recoverable to the full amount, purchased those securities for less than their nominal amount, without notice to P.; it was held, by Lord Plunket, and by the House of Lords on appeal, that C.'s purchase, while the compromise proposed by P. was feasible, was in trust for P.; and that C. was entitled only to the sum he had paid, with interest. 'The several cases,' observes Lord Cottenham, (8 C. & F. 707,) 'which have occurred in which solicitors have been restrained from acting against their former clients, or communicating information acquired in such employment, proceed upon a principle which governs this case; for it cannot be contended that they are at liberty to use for their own benefit, and to the prejudice of their former clients, information acquired whilst acting for them, which they are not permitted to communicate or to use for the benefit of others. I am therefore of opinion that Mr. C. had been incapacitated by the character of his employment from purchasing, for his own benefit,

these securities upon his employer's property, and that such incapacity continued at the time of his purchase, and consequently that he is to be considered as having so purchased for the benefit of his former employer."

The respective contributions to the full and able Notes by Mr. White and Mr. Tudor do not, of course, appear, but the result of their joint labour is very creditable to their learning and research, and the book cannot fail to be useful to the profession in general. We shall be glad to see the work extended, at least, to another volume.

STATUS OF ATTORNEYS.

To the Editor of the Legal Observer.

SIR,—In reading over the various letters which from time to time you have published on the subject of the "Status of Attorneys," it has appeared to me that no one has set himself to find out a remedy for the unfavourable opinion in which attorneys as a class are held; for I must agree with your correspondent "An Attorney," that collectively they bear no very high character.

As to the judiciousness of articling salaried clerks, I will not hazard an opinion, as the discussion of that question has already provoked so much angry feeling. I esteem myself fortunate in having been articulated under other circumstances.

I do not conceive that any legislative enactment concerning the premium to be paid with every articulated clerk would have the desired effect of raising the profession in public estimation; but it has occurred to me that an examination in general literature before young men are articulated, as well as a legal one on the completion of the course of study, might preclude the possibility of uneducated men being articulated, and so prevent persons from practising "who have had no other education than what a charity school imparts," or who, having received a better education, have neglected to improve their advantages.

Would it not also be a greater incentive to the industry of young men, if it were known how they acquitted themselves on passing, and if certificates of proficiency, &c., were given? At present, I believe, the lists only show who are to be admitted attorneys without reference to the capacity or ability shown by each.

Among attorneys many men can be found who have been educated at the public schools, and are not one whit behind the members of the other learned professions in literary attainments. But of this society at large is ignorant. If there were any institution formed, empowered to confer degrees, &c., in the law, as is the case at the universities, the hospitals, and the military colleges for the other professions, the public would be better informed of the capacity of each member, and the profession thereby, I think, improved.

I feel very jealous for the honour of a profession of which I hope soon to be a member, and this must be my excuse for thus troubling you.

E. B.

August 10, 1849.

SIR,—Your first correspondent's rejoinder is, I think, in fact expressive of even greater injustice and more unkindly feeling than any letters which have yet appeared in your journal. He seems to look upon society in a most peculiar manner, supposing that only wealthy people can be honourable and respectable. If he thinks a man should be nobly born to be an attorney, I beg to submit that he is quite wrong.

"Honour and shame from no condition rise;
"Act well your part, there all the honour lies."

With regard to a classic education, I by no means agree with your correspondent, for my notion of a good lawyer is a man who makes *truth* his study; one who understands the true meaning of words, and the relations they bear to each other. I think if education is to be a guide, that instead of the classics, a knowledge of mathematics and the arts and sciences would undoubtedly be far better, (truth surely is better than fiction); and then, perhaps, solicitors might stand a chance of admission into higher society, and take a more responsible position in society in general.

T. H. S.

[Two more letters on this subject have been received, but must be deferred.—ED.]

TITHE COMMISSIONERS' REPORT.

July 25, 1849.

SIR,—It is our duty to report to you the progress of the Commutation of the Tithes in England and Wales to the close of the year 1848.

We have received notices that voluntary proceedings have commenced in 9,632 tithe districts; of these notices one was received during the year 1848.

We have received 7,062 agreements, and confirmed 6,767; of these nine have been received and 14 confirmed during the year 1848.

6,619 notices for making awards have been issued, of which 195 were issued during the year 1848.

We have received 5,153 drafts of compulsory awards, and confirmed 4,712; of these 306 have been received, and 310 have been confirmed during the year 1848.

We have received 10,655 apportionments, and confirmed 10,385; and of these 482 have been received, and 525 confirmed during the year 1848.

In 11,479 tithe districts, as will be seen from the above statement, the rent-charges to be hereafter paid have been finally established by confirmed agreements or confirmed awards.

We have in our possession agreements and drafts of award as yet unconfirmed, which will include 796 additional tithe districts, and make a total, when completed, of 12,275 districts, in which the tithes will have been commuted.

397 altered apportionments were made by the Tithe Commissioners up to the 31st December, 1848, of which 294 were confirmed.

At that date exchanges of glebe lands were effected in 232 places, and 46 such exchanges were in progress.

At the close of 1848, we had confirmed 9,667 distinct mergers of tithes.

The tithes which remain to be settled will, for the most part, produce small rent-charges, some, however, of these will occasion considerable difficulty.

They consist, first, of cases which have been delayed from the uncertain state of the law under Lord Tenterden's Act.

With this class of cases we have been up to this time making steady progress, since we have been acting on the resolution pointed out in our last report of considering the certificate of the Barons of the Exchequer a sufficient warrant for our decisions in the prolonged absence of any final judgment.

The remaining cases consist of disputed modes of tithes, only partially or imperfectly commuted under Inclosure Acts, in a few instances of some importance, in numerous instances of slight importance, and further, of the tithes of extra-parochial places to which the Crown has a *primâ facie* right.

In all the cases where the amount involved is not large, we are much impeded by the disinclination of the parties to attend our meetings or give us any assistance in our inquiries, and for their own sake we take this opportunity of giving such parties notice of what are likely to be the results of their indifference or negligence.

In many cases the tithes and lands belong to the same person. In some instances the tithes are mortgaged or settled distinctly from the land, and the landowner cannot therefore merge. In the majority of instances, however, they can merge, and that by a simple instrument which costs little.

In spite of our invitations and exhortations we find it often impossible to procure these mergers. We are then obliged to treat the tithes as existent, to commute them into rent-charges, and to apportion those rent-charges, mapping the lands.

We have always been unwilling to be driven to these extremities, but the time is come when we can delay no longer.

Extra-parochial places produce many similar results. To the tithes of such places, the Crown has in all cases a *primâ facie*, and in some a valid and available title. By proof of non-payment for 30 years, or by the production of, or reasonable proof of royal grants, the *primâ facie* title of the Crown is easily rebutted, and the privilege at once conferred on the land-owners of merging, or, if they prefer it, of holding their rent-charges by a title which cannot afterwards be disputed.

The very slight exertion necessary to secure these benefits is more than we can prevail on a large body of land-owners to make.

We shall be obliged, we fear, in many such instances, to award the rent-charges to the Crown, whose *primâ facie* case is thus left unrebuted by any evidence before us. The rent-charges so established can only be got rid of, when got rid of at all, by further inquiries and very needless expenses.

We dwell on these facts as a warning to land-owners, and exclusively with a view to their benefit.

The powers entrusted to us by the Legislature are amply sufficient to enable us to get through this kind of work, whether we are or are not aided by the parties we have to deal with.

The present Tithe Act will expire at the end of the Parliamentary Session of 1851; by that time we hope to have commuted the whole of the tithes of England and Wales, as to which no litigation is then existing.

There remains the task of completing the apportionments not yet confirmed. It is a heavy one. The apportionments to be received will be between one and two thousand, after allowing for rent-charges merged, and for the reduction of their apparent numbers from other causes.

The conducting this operation constitutes the greater part of our office work at present, and will continue to press upon us till our labours close.

Deaths among the persons appointed to apportion, and other causes of delay, may prolong a few of these cases. Still we see ground for expecting that we shall get through this work by August, 1851.

There will be some cases, we hope and believe there will be few, of obstinate and protracted litigation. Over these we have in fact no control at all.

We trust that for these cases of litigation only the Legislature may have to provide separately at the close of the present Tithe Act.

(Signed) WM. BLAMIRE.

T. WENTWORTH BULLER.

RICHARD JONES.

To the Right Honourable
Sir George Grey, Bart., M.P., &c. &c.

MOOT POINTS.

RIGHT OF WAY.

A. and B. have two fields adjoining each other, over which there is no road. A. builds upon his field and forms a road adjoining B's land. Can B., of right, insist on having an entrance into such road?

CIVIL.

RAILWAY POWERS.—BUILDING LEASE.

An act passed in 1846 for making a railway, and the land of A. was scheduled therein to be taken compulsorily. In 1848, A. received

notice from the company that his land is required for the purposes of the railway.

A's land being situate near the town, is eligible for building. Was it competent for him to let it for building purposes prior to the

receipt of the notice in 1848; and will he and his lessee be entitled to be remunerated by the railway for the buildings so erected?

L.

RECENT DECISIONS IN THE SUPERIOR COURTS.

AND SHORT NOTES OF CASES.

House of Lords.

Smith v. The Officers of State in Scotland.
July 9, 10, 13, 1848.

SEA-BOUNDARY. — HIGH-WATER MARK. —
SPRING-TIDE.

Upon appeal to the House of Lords from the Court of Session in Scotland, against an injunction obtained by the Officers of State, restraining the building of a wall towards the sea beyond the high-water mark in spring-tides: Held, that the Officers of State were justified in obtaining the injunction, and the appeal was dismissed.

Quære, whether the highest water-mark in spring-tides is, according to the law of Scotland, the true landward boundary of the sea shore?

THIS was an appeal against an interlocutor of the Court of Session in Scotland by the appellant, a writer to the signet in Edinburgh and owner of certain property in the village of Portobello, under a lease granted to him by the Marquis of Abercorn, who is the owner under the Crown of the Barony of Duddingstone in which the village is comprised. In the title-deeds the property was stated to be bounded on the north side by the sea shore. During the year 1842, the appellant commenced building a new boundary wall on the north side towards the sea, and carried it about 30 feet beyond an old boundary wall, which constituted the boundary on the land side to the different properties, and was at flood tides washed by the sea. The sands beyond the old wall were used by the public for traffic and recreation. The Officers of State, who were the keepers of the Great and Privy Seals of Scotland, the Lord Clerk Registrar, the Lord Justice Clerk, and the Lord Advocate, protecting the rights of the Crown, applied for and obtained an injunction to restrain the appellant from completing the wall, on the ground that it was an encroachment on the sea shore which was vested in the Crown. The Court of Session holding that the highest water-mark in spring-tides was the landward boundary of the sea shore, made the injunction perpetual, whereupon this appeal was presented.

Sir F. Kelly and J. Anderson, for the appellant, contended that the sea shore passed under the grant to Lord Abercorn and from him to the appellant, or, at all events, that the sea shore did not extend beyond the highest water-mark in ordinary or neap-tides, citing Hale *De jure maris et de portibus*; *Blundell v. Catter-*

all, 5 B. & Ald. 268; and *Lowe v. Gorcott*, 3 B. & Ad. 863.

Bethell and Elliott, for the respondents, urged that the wall which extended beyond the high-water mark in ordinary spring-tides was an encroachment on the sea shore which belonged to the Crown, and that the respondents were entitled to prevent such encroachment.

Lord Brougham, in moving the judgment of the House, after stating the facts, said, the officers of the Crown were entitled to interfere and protect the rights of the Crown, and therefore had done no more than their duty in obtaining the injunction. It was unnecessary, upon the facts on the record, to decide what was the boundary of the sea shore according to the law of Scotland. His lordship therefore moved, as the judgment of the house, that the interlocutor of the Court of Session should be affirmed.

Lord Campbell and the other peers having concurred in the motion, the interlocutor was affirmed.

Rolls Court.

Hyde v. Edwards. July 20, 1849.

DEMURRER.—JURISDICTION BY BILL.

Where a sum of money was paid into Court under the London Dock Act, upon certain trusts: Held, that the Court has jurisdiction to determine the rights of the parties to the same by bill, and a demurrer alleging as a ground that a petition was the proceeding under the act was overruled.

THE London Dock Company having taken certain property for the purposes of their undertaking paid the purchase money thereof into the bank of England, in trust for Mr. and Mrs. Betts, with remainder as limited by the marriage settlement, to the right heirs of the wife in default of children. This suit was instituted, in default of such issue, by James and Sarah Hyde claiming to be entitled to a share in the fund so paid into the bank in right of the wife, under the heir of Mrs. Betts. Two of the defendants demurred on the ground that the Court had no jurisdiction to determine the right to the fund by bill, as the course of proceeding provided by the London Dock Act was by petition.

Lloyd and Hadow, in support of the demurrer; *Turner and Elderton*, contra.

The Master of the Rolls held, that the Court had jurisdiction to determine the rights of the parties to the fund on bill, and therefore overruled the demurrer.

Vice-Chancellor of England.

Ex parte Chetwood. May 29, 1849.

RAILWAY ACT.—COSTS OF INVESTMENT OF MONEY PAID INTO COURT.

Held, upon construction of a railway act, amalgamating railways, that a provision in a former act, as to the payment of costs of investment of money paid into Court for lands taken, was restored, and the petitioners accordingly declared entitled to such costs.

THIS was a petition for the investment of a sum of money, paid into Court by the Chester and Crewe Railway Company, as the value of certain land taken by them for the purposes of their railway; and for the costs of such investment. The land was originally taken by the Chester and Crewe Railway Company, whose act contained an express clause for the payment of these costs, but which act was in 1840 repealed, upon the amalgamation with it of the Grand Junction Railway, and the 2nd act contained no such provision. This latter act was, however, repealed in 1846, when the Manchester and Birmingham Railway was amalgamated with the railway, and provision was made by the 10th clause of the new act for the payment of costs, in the following words:—"In all cases in which, under the provisions of any of the acts thereby repealed, or any acts repealed by such lastly-mentioned acts or any other acts, any sum of money had already been paid by any of the said dissolved companies or by any company incorporated with such companies or any of them, or should thereafter be paid by them or any of them or the company thereby incorporated into the Bank of England, at any time or times on account of the purchase of any land or interest therein, or for any compensation or satisfaction or on any other account, such sum, or the stocks, funds, or securities in or upon which the same should have been or should be invested, either by the order of the Court of Exchequer or the Court of Chancery, or otherwise howsoever, and the interest, dividends, and annual produce thereof should be held and disposed of pursuant to the act or acts under which the same had been or should be so paid into the Bank of England; and all the provisions, powers, and authorities contained in such act or acts in relation to such monies, stocks, funds, and securities, should, for the purposes of this act, remain in full force, and should be considered and taken as if the company thereby incorporated were named in each such act instead of the company to which such act related."

Taylor, in support of the petition; *Follett*, contra.

The Vice-Chancellor said, that the money had been paid into Court for lands originally taken under the Chester and Crewe Railway Act, which was subsequently repealed by the Grand Junction Railway Act. If the latter act had remained in force no claim could have been made for costs; but the original act was,

so far as regarded the payment of costs, restored by the 10th section of the London and North Western Railway Act; and under which section, therefore, the petitioners were entitled to their costs.

Vice-Chancellor Knight Bruce.

In re Oxford and Worcester Extension and Chester Junction Railway Company. June 29, 1849.

PRODUCTION OF DOCUMENTS UNDER WINDING-UP ACT.—SOLICITOR'S LIEN.

Where the Master made an order under the Winding-up Act of 1848, directing the solicitors to the company to produce all documents in their possession, but on which they claimed a lien for a bill of costs,—a much thereof as required such production was discharged.

THIS was a motion on behalf of Messrs. Potter and Collingridge, of Basinghall Street, solicitors, to discharge so much of an order of the Master, made under the 11 & 12 Vict. c. 45, as directed them to deliver to the official manager all documents in their possession, on which they claimed a lien for a bill of costs.

Terrell and Logie, in support of the motion, cited *Ex parte Underwood*, in *re Hemsorth*, 1 De Gex, 190.

Cairns, contra, referred to the 67th section of the 11 & 12 Vict. c. 45, which enacts, that "when any order shall have been made under this act, by the Master or by the Court, for the payment of any moneys, or for the delivery of any effects, books, or documents to the Master or the official manager, and default shall have been made by any person in obeying such order, the same may be enforced against such person upon affidavit by the official manager of such default, and without any previous demand by the official manager or any other person," and contended that if the motion was granted it would put a stop to proceedings under the act, as the official manager had no funds in hand, and could not therefore pay such claims.

The Vice-Chancellor said, that the parties who represented the company sought to take out of the solicitor's hands the papers without discharging their lien. There was nothing in the act showing that the legislature intended to deprive solicitors of their lien, which would be an act of great injustice, and so much of the order, therefore, as required the solicitors to produce the documents, &c., would be discharged.

Vice-Chancellor Wigram.

Hardey v. Dartnell. July 13, 1849.

REVOCATION OF SUBMISSION TO ARBITRATION.—CONTEMPT.—PRACTICE.

Where a verdict of not guilty was agreed to be taken to indictments for perjury and conspiracy, and the matters in dispute were referred to arbitration, but the plaintiff had since revoked such submission: Held, that the proper course of proceeding is not

to move in equity to stay proceedings, but to proceed at law on the ground of contempt.

Two indictments for perjury and conspiracy had been instituted by one Tristan against his copartner, Hardey, upon proceedings arising out of a suit for an account, and claiming a lien on the partnership assets. An arrangement had been come to upon the trial of the indictment for perjury to take a verdict of not guilty on both indictments, and to refer all matters in dispute between the parties to arbitration. Tristan had, however, since revoked his submission to arbitration, and had applied for a commission to examine witnesses; whereupon this motion was made to stay the proceedings until the award had been made.

E. T. Hurlstone and C. J. Foster, in support of the motion; J. J. Jervis and D. D. Keane, contra, contended that the reference was invalid, as it was a compromise of criminal proceedings.

The Vice-Chancellor said, that the proper course was not to move to stay proceedings, but to proceed at law for a contempt. Without, therefore, giving any opinion whether the plaintiff's proceedings would be treated as a contempt at law, the motion would stand over with leave to the defendant to take such proceedings as he might be advised, the proceedings under the commission to be in the mean time suspended.

Queen's Bench.

(Before the Four Judges.)

Regina v. Hudson, Esparte Cobbett. May 22, 1849.

HABEAS CORPUS.—ATTACHMENT.—INSOLVENT DEBTOR.—DISCHARGE.

Held, that an insolvent debtor refusing to file his schedule under the 1 & 2 Vict. c. 110, s. 36, was rightly detained in custody under an attachment, and that his being placed with the first class prisoners under the 11 Vict. c. 7, s. 2, was justified by that section.

A RULE had been obtained for a writ of *habeas corpus*, directed to the keeper of the Queen's Prison, to bring up the body of Wm. Cobbett, with a view to his discharge.

The prisoner now appeared and contended, that as he had been detained on an attachment, he ought to be discharged from custody, and also, that he had been without any warrant removed to the criminal side of the Queen's Prison, and placed among the prisoners of the first class. In the return to the writ the defendant justified the removal under the 11 Vict. c. 7, s. 2, whereby it is provided that the first class of prisoners in the Queen's Prison, shall be composed of three descriptions of persons, of which the second description consists of "debtors refusing or neglecting to file a schedule of their property when ordered to do so by the Court for the Relief of Insolvent Debtors, under the provisions of the 36th section of the 1 & 2 Vict. c. 110," and submitted that as the applicant was one of that class of persons, there was no ground for discharging him from custody.

The Court held, that the applicant was properly in custody under the 11 Vict. c. 7, and had been rightly placed with prisoners of the first class under the 2nd section of that act. With regard to an attachment not being a sufficient instrument upon which to detain the prisoner in custody, the Court were of opinion that it was sufficient, and the rule for the *habeas corpus* must therefore be discharged.

Esparte Ford, Regina v. Hudson. May 22, 1849.
HABEAS CORPUS.—INSOLVENT DEBTOR.—DISCHARGE.

This was a similar application by Thomas Ford, upon the same ground, and the Court remanded the prisoner, as it appeared from the return made by the defendant that the applicant was rightly detained under the 11 Vict. c. 7.

Common Pleas.

Duke of Brunswick v. Sloman and others.
June 25, 1849.

VI. FA.—QUARE CLAUSAM FREGIT.—JUSTIFICATION.—DAMAGES.

In an action against the sheriff's officer for breaking open the outer door, he pleaded a justification under a fi. fa., and that the door was open; the jury having found that the door was not open, and giving damages 750l., including a sum of 250l. paid under protest to get rid of the execution; Held, that the damages were not excessive; and the rule nisi for new trial was discharged.

THIS action was brought by the plaintiff against the defendant and others in trespass *quare clausam fregit*. The defendants pleaded not guilty, and by a special plea justifying the entry under a writ of *fi. fa.*, and that the door was open. A verdict having been found for the plaintiff, damages 750l., including therein a sum of 250l. paid to the bailiff under protest to give up possession, and also finding that the outer door was not open, a rule *nisi* for a new trial had been obtained on the ground that the verdict was against evidence—the damages excessive—that as defendant Sloman was not present at the time of the trespass he was not liable—and also that the damages ought to be reduced to 500l.

The Court held, that the verdict was not against evidence, as, though there was contradictory evidence in the case, the credibility of witnesses was peculiarly within the province of the jury. As to the damages being excessive, and the claim for reducing the amount by the sum paid to the bailiff under protest, inasmuch as the trespass, which was of a serious nature, had been proved to the jury, it did not appear that they were excessive, and it was not competent to the defendant to insist on the reduction of the 250l., for the plaintiff was entitled to a verdict on the plea of not guilty, and also on the special plea. As to the liability of Sloman, he had offered to delay the execution on receiving a sum of money, and had finally received

the sum under protest, and withdrawn from possession. He had therefore taken on himself the execution of the warrant, and was identified with the other defendants. The rule nisi must be therefore discharged.

Exchequer.

Leeds and Thirsk Railway Company v. Fernley.

May 28, 1849.

ACTION FOR RAILWAY CALLS.—PLEA OF INFANCY.—DEMURRER.

In an action for calls by a railway company against an infant shareholder, the defendant pleaded infancy without more; a demurrer to the plea was allowed, on the ground that the plea ought to have alleged special circumstances to take the defendant out of the general statutable liability created by the 8 & 9 Vict. c. 16.

THIS action was brought for the recovery of certain calls on railway shares, to which the defendant pleaded that he was an infant at the time he became possessed of the shares in question, and also when the calls were made, and to which plea the plaintiffs demurred.

The Court said that the case of *Newry and Baniskillen Railway Company v. Combe*, 37 L. O. 400, cited at bar, and in which it had been held, that an infant was not liable in an action for railway calls, was distinguishable from the present, inasmuch as in that case it appeared from the pleadings that he had repudiated the contract for the shares while he was an infant, and given notice thereof to the plaintiffs, and also that he would continue to hold the shares only in trust for them. No such allegation of repudiating the contract was made in the present case, and, for aught that appeared, the shares might have come to the defendant by operation of law. In the case of the *Cork and Bandon Railway Company v. Cazenove*, (34 L. O. 464,) which was also an action for calls, the defence of infancy was set up, but the Court of Queen's Bench had held the infant liable. There the Court inferred that the defendant was of full age when the contract was made, on account of the defendant's pleading by attorney and not by guardian, but that was not decisive of the defendant's not being an infant at the time of the action brought. In this case, however, the defendant merely sets up his plea of infancy, and does not distinctly plead any special circumstances sufficient to exempt him from liability for the calls. As the defendant, therefore, has not set up any such grounds for exemption, the demurrer must be allowed and judgment be entered for the plaintiff.

Court of Exchequer Chamber.

Moulton v. Camroux and others. Feb. 5, 6, May 29, 1849.

ANNUITY DEED.—ENROLMENT.—PARTY NON COMPOS MENTIS.—SETTING ASIDE.

Held, that the grantee of an annuity cannot

set up non-enrolment thereof against the grantor.

Held also, that where the officers of an insurance society granted, bona fide, and without any knowledge of his insanity, an annuity to a party who was at the time insane, and it was not shown that they were aware or took advantage of such circumstance: Held, that the contract could not be set aside, either by the party or his representatives.

THIS action was brought by the administrator of one Thomas Lee, deceased, to recover from the defendant, who was the secretary of an assurance society called the National Loan Fund and Life Society, a sum of money paid by the deceased in the purchase of two annuities for his own life, on the ground that at the time he was of unsound mind. The jury returned a special verdict for the defendant, finding that the deceased made the proposal to purchase an annuity, commencing on Aug. 29, 1844, in consideration of the sum of 350*l.*, and also a deferred annuity to accrue in 1865, which the society agreed to, paying in the whole 550*l.*, and 5*l.* 6*s.* 2*d.*; and that the deceased was at the time incapable of managing his own affairs, but that the society was not at the time aware thereof. The Court of Exchequer, upon motion to enter verdict for the plaintiff, and on an objection made that the deed was not enrolled, held that the verdict was right, on the ground that the deceased was apparently of sound intellect, and that the company had *bona fide* entered into the contracts granting the annuities; and that as the parties could not be restored to their former condition, the mere fact of one of them being *non compos mentis*, did not void the contract; and also that the grantee of an annuity could not set up the want of enrolment against the grantor. The case now came on upon appeal to the Exchequer Chamber from the decision of the Court below.

Needham for the appellant; and *Gurney* for the respondents.

The Court held, (affirming the judgment of the Court below,) that the grantee of an annuity could not set up the non-enrolment thereof against the grantor, and took time to consider as to the other point.

Cur. ad. vcl.

The Court said, that no suggestion was made on the part of the plaintiff that the defendant had any reason to believe or know that the deceased was of unsound mind, or that the society had taken any advantage of him; but the money was sought to be recovered as in a case of total want of consideration. The plaintiff, in order to recover, should have shown that the defendant was aware of the deceased's unsoundness of mind, and that they had acted differently from what might have been expected if the deceased had been perfectly sane. The judgment of the Court below would, therefore, be affirmed.

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SATURDAY, AUGUST 25, 1849.  
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BANKRUPT LAW CONSOLIDATION ACT.

A CONSIDERABLE proportion of our space, in this as in the last number, is devoted to the act "to Amend and Consolidate the Bankrupt Laws;" and we have reason to believe, that the plan now adopted of printing the sections, by which important changes have been for the first time introduced in the law, verbatim from the act, and giving an abstract only of the provisions previously in force, together with a reference to the statutes in which they were heretofore embodied, will be found at once useful and convenient.

A glance at the sections printed in extenso will satisfy the reader, of the number, variety, and importance of the changes produced in the law generally by this measure. The validity of warrants of attorney, cognovits, and judge's orders for judgment obtained by consent, are not only affected by sections 136 and 137, as already observed, (ante, p. 306,) but the rights of suitors and of all persons dealing with traders, are materially altered by the provisions of the 133rd section, (ante, p. 306,) as well as by those under which, not only the assignees of a bankrupt, but all creditors who have proved, become entitled to a certificate of such proof, which certificate "shall have the effect of a judgment entered up in one of her Majesty's Superior Courts of Common Law at Westminster, until the allowance of the certificate of conformity of such bankrupt."^a Whether the subsequent section, which provides that a bankrupt taken in execution after the refusal or suspension of his certificate, shall not be discharged from such execution for the full period of one

year, except by order of the Court of Bankruptcy, operates to deprive the judges of the Superior Courts of all jurisdiction in cases in which an unprotected bankrupt is taken in execution upon a writ issued by the Superior Courts, we shall not stay to inquire, but as it is quite clear that an unprotected bankrupt may be taken in execution by any creditor who has proved, and detained in prison for a whole year under this section, it is important that the proof of debts—the preliminary proceeding which gives so great a power to a creditor—should be conducted in a manner very different from that in which it has hitherto been.

The arrangement and composition provisions, extending from section 211 to 221, inclusive, it will be observed, establish *three* distinct systems, all of which are novel, and totally dissimilar to the proceeding in an ordinary bankruptcy under this act. The sections relating to arrangements between debtors and creditors under the superintendence of the Court, have no analogy to any provisions to be found in our statute book, except those contained in the act 7 & 8 Vict. c. 70, which does not apply at all to traders, but to persons not being traders, and petitioning with the concurrence of one-third of their creditors.^d Under the act 7 & 8 Vict. c. 70, no provision is made for proof of debts, and publicity is carefully guarded against; the system established by that act differs essentially therefore from any of those now created by the 12 & 13 Vict. c. 106, and as the 7 & 8 Vict. c. 70, is unrepealed and untouched by the Bankrupt Law Consolidation Act, the Court of Bankruptcy, in arrangement cases, will have to administer the new law as regards traders, and a very different system as applicable to persons who are not traders.

^a See section 257, *post*, p. 325.

^b Section 259, *post*, p. 326.

^c *Post*, pages 319 to 323.

^d See a decision under that act, p. 334, *post*.

Great additional power is given to the Commissioners of the Court of Bankruptcy under this act. They will not only have to exercise individually, the primary jurisdiction in matters of bankruptcy heretofore belonging to the Lord Chancellor, and the Vice-Chancellor sitting in bankruptcy, but they have authority to enforce their own rules and orders against all other persons as well as bankrupts, by imprisonment for an unlimited period,* and if satisfied that a fiat was issued fraudulently or maliciously, they have authority (by section 267,) to award the bankrupt satisfaction in damages for the injury sustained. On the other hand, their decisions are subject to appeal, and if their power is not abridged, the exercise of their discretion, we apprehend, is materially restrained by section 256, (*post*, p. 325,) which, enumerating a variety of offences of greater or less gravity, but which comprehend very many of the offences usually imputed to bankrupts, provides that if it appears the bankrupt has committed any of such offences, the Court shall refuse to grant the bankrupt further protection, and suspend or refuse his certificate. The discretion vested in the Commissioner under the old law in granting the certificate, "having regard to the conduct of the bankrupt as a trader, before as well as after his bankruptcy," is continued in words by sect. 198, but would seem to be modified and limited by the section already referred to.

More convenient opportunities will arise for discussing the merits and effect of the alterations introduced by the recent act, of which we shall speedily take advantage. At present, our object is confined to an endeavour to assist in affording information as to the nature and effect of the changes it has created.

We agree with the opinion expressed in the report of the City Committee, appointed to promote the Amendment of the Bankrupt Law, that the success of the measure depends, in a great degree upon the Commissioners to whom its administration is mainly confided, although we should have approved more of the taste and spirit with which the report was framed, if the committee had not deemed it necessary to express their "trust that means will be taken by those in authority, not only to prevent the recurrence of conduct by the Commissioners in the country (which has been noticed in Parliament), but to secure the appointment of those who will duly appreciate and efficiently discharge the new legal and moral duties entrusted to

them under this act." Great additional responsibility is thrown upon the Commissioners under the provisions of this act, and in the performance of their duties, they are fairly entitled to the assistance and support of the legal profession, as well as to the respectful consideration of the public, whose interests are rarely promoted by disparaging or discouraging those who fill judicial offices.

12 & 13 VICT. C. 106.

[Concluded from p. 308.]

Allowances to the Bankrupt.

194. Allowances to bankrupt for maintenance, as in 6 Geo. 4, c. 16, s. 114.

195. Allowances to bankrupt 5l. per cent., and not exceeding 400l. as soon as 10s. in the pound is paid; 7½ per cent. and not exceeding 500l., if 12s. 6d. paid; 10l. per cent., and not exceeding 600l. if 15s. in the pound paid. Allowances not payable till 12 months after the bankruptcy, and then only if requisite amount of dividends paid. If at expiration of 12 months the dividends paid be under 10s. in the pound, bankrupt may be allowed not exceeding 300l. and 3l. per cent. (See 6 Geo. 4, c. 16, s. 125; and 5 & 6 Vict. c. 122, s. 44.)

196. One partner may receive allowance although copartner not entitled. (6 Geo. 4, c. 16, s. 129; and 5 & 6 Vict. c. 122, s. 45.)

197. If produce of estate pay 20s. in the pound, and leave surplus, such surplus to be paid to bankrupt after payment of interest on debts, as in 6 Geo. 4, c. 16, s. 132.

Certificate of Conformity.

198. "Forthwith after the bankrupt shall have passed his last examination, the Court shall appoint a public sitting for the allowance of his certificate (whereof and of the purport whereof 21 days' notice shall be given in the *London Gazette*, and to the solicitor of the assignees), and at such sitting any of the creditors of such bankrupt, who has given to the registrar of the Court three clear days' notice in writing of his intention to oppose, may be heard against the allowance of such certificate; and the Court, having regard to the conformity of the bankrupt to the law of bankruptcy, and to his conduct as a trader before as well as after his bankruptcy, and whether the allowance of such certificate be opposed by any creditor or not, shall judge of any objection against allowing such certificate, and either find the bankrupt entitled thereto, and allow the same, or refuse or suspend the allowance thereof, or annex such conditions thereto as the justice of the case may require."

199. "The certificate of conformity under this act shall be in writing under the seal of the Court and the hand of the Commissioner, and shall certify that the bankrupt has made a full discovery of his estate and effects, and in all things conformed, and that, so far as the Court can judge, there does not appear any reason to question the truth or fullness of such discovery (and shall be in the form contained in the sche-

* Section 266, *post*, p. 326.

dule Z. to this act annexed, or to the like effect) ; and notice of the allowance of such certificate and of the class thereof ' shall be advertised in the *London Gazette*, in such manner as may be directed by any rule or order to be made in pursuance of this act : and every certificate of conformity allowed by any Commissioner before the time appointed for the commencement of this act, though not confirmed according to the laws in force before that time, shall discharge the bankrupt from all debts due by him when he became bankrupt, and from all claims and demands made provable under the fiat."

200. Certificate to discharge bankrupt from all debts due by him when he became bankrupt. (5 & 6 Vict. c. 122, s. 37.)

201. Bankrupt not entitled to certificate if he has lost by gaming 20*l.* in one day, or 200*l.* within 12 months, or 200*l.* by stock-jobbing, or concealed or destroyed books, or made fraudulent entries, or concealed any property, or permitted fictitious debts to be proved. (5 & 6 Vict. c. 122, s. 40.)

202. Contract or security to induce creditor to forbear opposition void. (5 & 6 Vict. c. 122, s. 40.)

203. "At any time within six months after any certificate of conformity shall have been allowed, and subject to such order, as to deposit of costs as may by any general rule or order to be made in pursuance of this act be directed, any creditor of the bankrupt, or any assignee, official or other, may apply to the Vice-Chancellor that such certificate may be recalled and delivered up to be cancelled; and the Vice-Chancellor may, on good cause shown, order such certificate to be recalled and cancelled."

204. "No bankrupt, after his certificate shall have been allowed, shall be liable to pay or satisfy any debt, claim, or demand from which he shall have been discharged by virtue of such certificate, or any part of such debt, claim, or demand, upon any contract, promise, or agreement made after the issuing of the fiat or filing of the petition for adjudication of bankruptcy, and if any bankrupt be sued upon any such contract, promise, or agreement, he

may plead the general issue, and give this act and the special matter in evidence."

205. Bankrupt having obtained his certificate, free from arrest,—certificate to be evidence of the bankruptcy and proceedings, and bankrupt in execution may be discharged. (See 5 & 6 Vict. c. 122, s. 42.)

206. "No such certificate shall be delivered to the bankrupt until after the expiration of the time allowed for entering an appeal; and if an appeal be duly entered against the judgment of such Court for the allowance of the certificate, and notice thereof be given to the Court in such manner as may, by any general rule or order to be made in pursuance of this act, be directed, the certificate shall be further kept by the Court, and abide the judgment of the Vice-Chancellor thereupon; and upon any appeal duly entered and prosecuted relating to the certificate or to the judgment of the Court as to any offence under this act charged against the bankrupt, the Vice-Chancellor shall have power to rescind or vary the order of the Court below, or to make such other order thereon as he may think fit; and upon an order for the allowance of any certificate by the Vice-Chancellor, and whether with conditions or not, or after a suspension thereof by order of the Vice-Chancellor or not, such certificate may be allowed and signed by the Court below, or by the Vice-Chancellor."

207. Allowance or refusal or suspension of certificate, except in case of appeal, to be final and conclusive, unless obtained fraudulently, in which case Court may order rehearing.

Estates Tail and Copyholds.

208. Clauses in 3 & 4 W. 4, c. 74, with respect to the disposition of estates tail under bankruptcies, extended to proceedings under petition for adjudication.

209. Court may make sale of copyhold lands for the benefit of creditors. (6 Geo. 4, c. 16, s. 68).

210. Vendees of copyhold lands shall compound with the lord for their fines. (6 Geo. 4, c. 16, s. 69).

"Arrangements between Debtors and Creditors.

211. "Any such trader unable to meet his engagements with his creditors, and desirous of laying the state of his affairs before them, under the superintendence and control of the Court of Bankruptcy, and of submitting himself to the jurisdiction of the Court, in manner hereinafter mentioned, may present a petition to the Court, setting forth the true cause of such inability, and praying that his person and property may be protected from all process until further order; and the Court, on such petition, shall have power to grant protection, and may renew the same from time to time as it shall think fit, and, if the petitioner be in prison or in custody for debt, may, except in the cases next hereinafter mentioned, order his immedi-

do only award him, this certificate as of the third class."

' The intention of the legislature that the certificates of bankrupts should be in three classes, is not the subject of any express enactment, but is to be inferred from the form of certificate prescribed by the above section. In the form furnished by Schedule Z., the Commissioner, after proceeding in the old form to adjudge the bankrupt entitled to his certificate, is required to add as follows:—"And I further certify, that his bankruptcy has arisen from unavoidable losses and misfortunes, and that he is entitled to, and I do award him, this certificate as of the first class; or that his bankruptcy has not wholly arisen from unavoidable losses and misfortunes, and that he is entitled to, and I do award him, this certificate as of the second class; or that his bankruptcy has not arisen from unavoidable losses or misfortunes, and that he is only entitled to, and I

ate release, either absolutely or on condition, and may take bail for his attendance at the several sittings of the Court hereinafter mentioned: Provided always, that the Court shall not order such release where it shall appear by any judgment, order, commitment, or sentence under which such petitioner is in prison or in custody, or by the record or entry of any such judgment, order, commitment, or sentence, and the pleadings or proceedings previously thereto, that he is in prison or in custody for any debt contracted by fraud or breach of trust, or by reason of any prosecution against him, whereby he had been convicted of any offence, or for any debt contracted by reason of any judgment in any proceeding for breach of the Revenue Laws, or in any action for breach of promise of marriage, seduction, criminal conversation, libel, slander, assault, battery, malicious arrest, malicious trespass, maliciously suing out a fiat in bankruptcy, or maliciously filing or prosecuting a petition for adjudication of bankruptcy: Provided also, that such release shall in nowise affect any rights of the creditor at whose suit such petitioner may be in prison or in custody against such petitioner, except the right of detaining him in prison or in custody, whilst protected from imprisonment by order of the Court."

212. "Every such petition shall be in the form contained in the schedule A a. to this act annexed, and be filed and prosecuted in the Court within the district of which the petitioner shall have resided or carried on business for six months next immediately preceding the time of filing such petition, unless the senior Commissioner shall order the same to be filed and prosecuted or further prosecuted in any other district, and which order he shall have power to make, and the date of filing every such petition shall be endorsed thereon, and there shall be filed therewith an affidavit in the form contained in the schedule A b. to this act annexed."

213. "Forthwith after the granting of any order for protection, the Court shall appoint a private sitting to be held at such time and place as it may name, and shall at the same time appoint an official assignee to act in the matter of such petition, and upon sufficient cause shown may, if it shall think fit, direct that the estate and effects of the petitioning debtor, or any part thereof, shall be possessed and received by such official assignee, or be taken possession of by the messenger of the Court; and all stock, monies, and other effects of the petitioning debtor, shall be transferred, delivered, and paid by the official assignee into the Bank of England, to the credit of the accountant in bankruptcy, to be subject to the like rule and regulation for keeping the account of the said monies and other effects, and for the payment and delivery in, investment, and payment and delivery out of the same, as in bankruptcy, and the Court shall have power to examine on oath such petitioning debtor, or any witness produced by him, or any creditor or person claiming to be a creditor of such peti-

tioning debtor, and to adjourn such private sitting or any subsequent private sitting from time to time as it shall think fit; and notice of such private sitting shall be given in writing to every creditor not less than 14 days before the same is held, such notice to be sent by post addressed to every creditor at his last known place of business or residence."

214. "The petitioning debtor shall, 10 days before the day appointed for the private sitting of the Court, file in Court, and in such form as may by any rule or order to be made in pursuance of this act be directed, a full account of his debts, and the consideration thereof, and the names, residences, and occupations of his creditors, and also a full account of his estate and effects, whether in possession, reversion, or expectancy, and of all debts and rights due to or claimed by him, and of all property, of what kind soever, held in trust for him, and shall therein set forth such proposal as he is able to make for the future payment or the compromise of such debts or engagements, and shall furnish the official assignee with a copy of such account."

215. "At the private sitting of the Court appointed in manner hereinbefore mentioned, or at any adjournment thereof, the creditors shall prove their debts, (such proofs to be in all respects as proofs in bankruptcy,) and the petitioning debtor shall attend, and make oath of the truth of the account filed by him, and may be examined thereon; and if at such sitting, or at any adjournment thereof, three-fifths in number and value of the creditors who have proved debts to the amount of 10*l*. shall assent to the proposal of such petitioning debtor, or to any modification thereof, the Court shall appoint another private sitting for the confirmation of such proposal or modified proposal, such second sitting to be held not earlier than 14 days from the first sitting, and notice thereof in writing shall be personally served on every creditor who was not present by himself or his appointed agent at such first sitting, seven clear days at least before the day appointed for such second sitting; Provided always, that the Court, if it shall think fit, may make order in any special case that service of such notice at the last known place of abode or business, or usual place of resort of any creditor shall be deemed good service."

216. "At the second sitting, or at any adjournment thereof, the creditors may also prove their debts, and if three-fifths in number and value of those who have proved debts to the amount of 10*l*. shall agree to accept such proposal as was assented to at the first sitting, the terms thereof shall be reduced into writing, and the creditors shall sign the same; and such resolution or agreement (subject to such confirmation as is hereinafter mentioned) shall thenceforth be binding and of full force, as well against the petitioning debtor as against all persons who were creditors at the date of his petition, and who had notice of the said several sittings of the Court; and the Court, if it shall think the same reasonable and proper to

be executed, after hearing such creditors, by themselves, their counsel or attorneys, as may desire to be heard either for or against such resolution or agreement, shall approve and confirm the same, and cause it to be filed and entered of record, and shall grant to the petitioning debtor a certificate of the filing and entering of record of such approval and confirmation, and shall from time to time endorse on such certificate a protection from arrest; and such petitioning debtor shall be free from arrest at the suit of any person being a creditor at the date of his petition, and having had such several notice or notices as aforesaid; and any officer arresting such petitioning debtor at the suit of any such creditor, and on sight of such certificate and protection not releasing such petitioning debtor, shall be liable to such penalty as is provided respecting bankrupts in the like case; provided, however, that no such protection shall be valid in favour of any petitioning debtor who shall be proved to have been about to abscond beyond the jurisdiction of the Court, or who has concealed or is concealing any part of his estate or effects, nor against any creditor whose debt is not truly specified in the account filed by such petitioning debtor, nor against any creditor whose debt has been contracted by reason of any manner of fraud or breach of trust."

217. "Any person duly authorized by letter of attorney from any creditor who has proved a debt to the amount of 10*l.* and upwards shall be entitled to vote on the question of assent or dissent to the proposal of such petitioning trader."

218. "From and after the date of the approval and confirmation of such resolution or agreement all the estate and effects of such petitioning trader shall vest in the official assignee (if such shall be required by virtue of such resolution, and either alone or jointly with any person or person, as may be expressed in such resolution,) as fully as if such official assignee were an assignee under any bankruptcy; and every such official assignee may sue and be sued as if he were such assignee; and in the event of the death, resignation, or removal of any such official assignee, the Court shall have power to appoint another; and if the estate and effects shall have vested in such official assignee, the same shall vest in the new official assignee so appointed, in the same manner as in bankruptcy."

219. "The official assignee shall once at least in every six months, or oftener if the Court shall require it, produce to the Court, on oath, a full and true account of all monies, property, and effects of such petitioning trader which have come to his hands, and of the disposal thereof; and the Court shall examine the same, and shall certify the result of such examination, and, if need be, order payment to the creditors of such petitioner, according to the terms of the resolution or agreement, and may in such account make all just allowances, and may order payment to the official assignee of such a sum as remuneration for his services as shall appear just and reasonable."

220. "In case any difficulty shall arise in the execution of the said resolution or agreement, it shall be lawful for the Court to cause a special sitting of the Court to be held; and the resolution of the majority of the creditors at such sitting who have proved debts to the amount of 10*l.*, to confirm, alter, or annul the whole or any part of such resolution or agreement, shall be as valid as if it had been part of the original resolution or agreement: Provided, however, that if one-third in number and value of the creditors of such petitioning trader do not attend such sitting, the resolution thereof shall not be valid unless the same is approved and confirmed by the Court."

221. "So soon as the said resolution or agreement shall have been carried into effect, and the creditors of such petitioning trader shall have been satisfied, according to the tenor thereof, the Court shall give to such petitioner a certificate under the hand and seal of the Commissioner in the form contained in the Schedule (A c.) to this act annexed, setting forth the filing of the petition, the resolution or agreement of the creditors, and that the said resolution or agreement has been fully carried into effect; and such certificate shall thenceforth operate to all intents and purposes as fully as if the same were a certificate of conformity under a bankruptcy, except only that any debt which shall have been contracted wholly or in part by reason of any manner of fraud or breach of trust, or without reasonable probability at the time of contract of being able to pay the same, or by reason of any judgment in any prosecution for breach of the Revenue Laws, or in any action for breach of promise of marriage, seduction, criminal conversation, libel, slander, assault, battery, malicious arrest, malicious trespass, maliciously suing out a fiat in bankruptcy, or maliciously filing or prosecuting a petition for adjudication of bankruptcy, shall not be barred by such certificate."

222. "The Court, on being satisfied that the official assignee has fully performed his trust, shall give to him a certificate thereof in the form contained in the Schedule (A d.) to this act annexed; and such certificate shall be a full release and acquittance to such official assignee, both in law and equity, for all matters done by him as such official assignee."

223. "If the petitioning debtor shall not duly attend the sittings of the Court, or if he shall not file his account in manner aforesaid, within such extended time as may be allowed him by the Court for such purpose, or if he shall fail to obey any order of the Court which may be made in the matter of his petition, such petition shall be dismissed; and if at the first private sitting of the Court, or at any adjournment thereof, the proposal of the petitioning debtor, or some modification thereof, be not assented to, or if at any time after the filing of any petition for protection it shall be shown to the satisfaction of the Court, by any creditor, that the debts of such petitioning debtor or any part thereof have been contracted by reason of any manner of fraud or breach of trust, or with-

out reasonable probability at the time of contract of being able to pay the same, or by reason of any judgment in any prosecution for breach of the Revenue Laws, or in any action for breach of promise of marriage, seduction, criminal conversation, malicious arrest, or malicious prosecution of a bankruptcy, or if it shall be shown that the affidavit filed with his petition was wilfully untrue, so far as concerned the assets ready to be produced by him, or that he has not made a full disclosure of his debts and credits, estate and effects, and is not desirous of making a *bond fide* arrangement with all his creditors, or that his proposal to that effect is not reasonable and proper to be executed under the direction of the Court, or that he has postponed the presentation of his petition longer than was excusable, or if within three months of the time of presenting his petition he shall have assigned, transferred, or made away with any portion of his estate or effects otherwise than in due course, or shall have voluntarily done or suffered any act whereby his goods shall have been taken in execution, it shall be lawful for the Court to adjudge such petitioning debtor a bankrupt, and to adjourn all further proceedings in the matter into the public Court, and to advertise such adjudication, and appoint sittings for choice of assignees and for last examination, as in bankruptcy; and the petitioning debtor shall thenceforth be amenable to the jurisdiction of the Court in the same manner as any other bankrupt, and any proposal which may have been made or assented to or confirmed shall be wholly and altogether void; and the Court shall have power, at any time, on the application of any creditor, to appoint a private sitting for the purpose of such inquiry, and may summon before it such petitioning debtor, or any other person, and examine him upon oath touching such matters; and every such summons and examination shall be enforced in such manner as summonses and examinations are enforced in matters of bankruptcy."

Arrangements by Deed.

224. "Every deed or memorandum of arrangement now or hereafter entered into between any such trader and his creditors and signed by or on behalf of six-sevenths in number and value of those creditors whose debts amount to 10*l*. and upwards, touching such trader's liabilities, and his release therefrom, and the distribution, inspection, conduct, management, and mode of winding-up of his estate, or all or any of such matters, or any matters having reference thereto, shall (subject to the conditions herein-after mentioned) be as effectual and obligatory in all respects upon all the creditors who shall not have signed such deed or memorandum of arrangement as if they had duly signed the same; and such deed or memorandum, when so signed, shall not be or be liable to be disturbed or impeached by reason of any prior or subsequent act of bankruptcy: Provided always, that every creditor shall be accounted a creditor in value in respect

of such amount only as, upon an account fairly stated, after allowing the value of mortgaged property and other such available securities or liens from such trader, shall appear to be the balance due to him."

225. "No such deed or memorandum of arrangement shall be effectual or obligatory upon any creditor who shall not have signed the same, until after the expiration of three months from the time at which such creditor shall have had notice from such trader of his suspension of payment, and of such deed or memorandum of arrangement, unless such trader shall within such time obtain from the Court an order or certificate of the said Court declaring or certifying that such deed or memorandum of arrangement has been duly signed by or on behalf of such majority of the creditors as aforesaid; and it shall be lawful for the Court within the district of which the trader shall have resided or carried on business for six months next immediately preceding his suspension of payment to make such order or certificate on the petition of any such trader, and to exercise jurisdiction in and over the matters of any such application; and no creditor who shall not have had 14 days' notice of any intended application for such order or certificate as aforesaid shall be bound thereby."

226. "When the trustee or inspector under any such deed or memorandum of arrangement, or, if there shall be no such trustee or inspector, when any two of the creditors, shall be satisfied that six-sevenths in number and value of the creditors whose debts amount to 10*l*. and upwards have signed such deed or memorandum, it shall be lawful for such trustee or inspector, or for such two creditors, as the case may be, to certify the same to the Court in writing, and such certificate shall be filed with the Registrar of the Court, and shall thereupon be *prima facie* evidence in all Courts of law and equity that such deed or memorandum of arrangement has been so signed."

227. "Every such certificate as last aforesaid shall have appended thereto a full account of the debts of such trader, together with the names, residences, and occupations of his creditors, and shall be accompanied by an affidavit by such arranging debtor verifying the same; and any omission in such account, or the insertion therein of any debt not really existing, or of any larger amount of debt than that really existing, and which shall appear to the Court to have been made through the culpable negligence or fraud or evil intention of such arranging debtor, with intent to defraud any of his creditors, shall deprive him of the benefit of the provisions made for his relief, and of the discharge proposed in any such deed or memorandum of arrangement: Provided always, that any omission, insertion, or incorrectness in such account, which shall not have been made through such culpable negligence or fraud or evil intention as aforesaid, shall not defeat or otherwise affect such deed or memorandum of arrangement."

228. "The creditors of every such trader

shall have the same rights respectively as to set-off, mutual credit, lien, and priority, and joint and separate assets shall be distributed, in like manner as in bankruptcy; and no creditor shall be prejudiced or affected by being a party to any such deed or memorandum of arrangement as aforesaid, or by such deed being obligatory upon him as to his right or remedy against any person, other than such trader; and every person who would be entitled to prove in bankruptcy shall be deemed a creditor within the meaning of the provisions of this act, with respect to arrangements by deed."

229. "If any creditor of any arranging debtor shall be desirous to show that the administration of the estate of such arranging debtor has not been duly conducted in conformity with such deed or memorandum of arrangement, it shall be lawful for him to apply to the Court by petition, supported by affidavit, stating any facts or circumstances to show that such administration has not been duly conducted, and thereupon the Court shall have full power and it is hereby fully authorized to consider the subject matter of such application, and if it shall think fit may direct any inquiry, and in such manner as it shall think proper, into the subject of such application, and generally may make such order and exercise such jurisdiction in or over the subject matter of such application and the costs thereof as to the said Court shall appear just."

Composition after Bankruptcy.

230. "Any bankrupt, at any time after adjudication of bankruptcy shall have been made against him, shall call a meeting of his creditors (whereof, and of the purport whereof, 21 days' notice shall be given in the *London Gazette*), and if the bankrupt or his friends shall make an offer of composition, and nine-tenths in number and value of the creditors assembled at such meeting shall agree to accept the same, another meeting for the purpose of deciding upon such offer shall be appointed to be holden, whereof such notice shall be given as aforesaid, and if at such second meeting nine-tenths in number and value of the creditors then present shall also agree to accept such offer, the Court shall and may, upon such acceptance being testified by them in writing, and upon payment of such sum as the Court shall direct, annul the adjudication of bankruptcy, and supersede or dismiss the fiat or petition for adjudication, and every creditor of such bankrupt shall be bound to accept of such composition so agreed to."

231. "In deciding upon the offer of composition no creditor whose debt is below 20*l.*, shall be reckoned in number, but the debt due to such creditor shall be computed in value; and any creditor to the amount of 50*l.* and upwards residing out of England shall be personally served with a copy of the notice of the meeting to decide upon such offer as aforesaid and of the purpose for which the same is called so long before such meeting, as that he may have time to vote thereat, and such creditor shall

be entitled to vote by letter of attorney, executed and attested in manner required for a creditor's voting in the choice of assignees; and if any creditor shall agree to accept any gratuity or higher composition for assenting to such offer he shall forfeit the debt due to him, together with such gratuity or composition; and the bankrupt shall (if thereto required) make oath before the Court that there has been no such transaction between him, or any person with his privity, and any of the creditors, and that he has not used any undue means or influence with any of them to attain such assent."

Of Evidence.

232. "The proper officer of the Court in London and in the several districts in the country shall, on the reasonable request of any bankrupt or arranging debtor, or of any creditor of such bankrupt having proved his debt, or, in the case of an arranging debtor, when the debt of the creditor has been admitted in the petition or proved, or the attorney of any such bankrupt, debtor or creditor, produce and show to such bankrupt, debtor, creditor, or attorney, at such times as the Court shall direct, every fiat, petition for adjudication of bankruptcy, adjudication of bankruptcy, and petition for arrangement, against or by such bankrupt, and all orders and proceedings under any such fiat, petition, or adjudication, and the Court shall order the official assignee or officer of the Court, as the case may be, to permit such bankrupt, debtor, creditor, or attorney to have inspection at all reasonable times of all books, papers, and writings relating to the matters of such fiat, petition, or adjudication, and the estate of the bankrupt or debtor in the possession of the assignees, or filed in Court in such matter, and permit him to inspect and examine the same; and such official assignee or such officer shall provide for any such bankrupt, debtor, creditor, or attorney requiring the same an office copy of such fiat, petition, or other proceeding, books, papers, and writings as aforesaid, or of such part thereof as shall be required, receiving such fee or sum or rate of charge as may be authorized in that behalf."

233. If bankrupt shall not dispute fiat or petition the *Gazette* to be conclusive evidence of the bankruptcy as against the bankrupt and against persons whom he might have sued had he not been adjudged bankrupt.

234. In actions, (other than those brought by the assignees in cases in which the bankrupt might have sued had he not been bankrupt) by or against any person acting under the bankruptcy, no proof required at the trial of the petitioning creditor's debt, trading or act of bankruptcy, unless notice be given that these matters are disputed. (6 Geo. 4, c. 16, s. 90.)

235. The same in suits in equity. (6 Geo. 4, c. 16, s. 91.)

236. Proceedings purporting to be sealed with the seal of the Court receivable in evidence. (2 & 3 Wm. 4, c. 114, ss. 8 & 9, and 6 Geo. 4, c. 16, ss. 96 and 97.)

237. "All Courts, judges, justices, and per-

sons judicially acting, and other officers, shall take judicial notice of the signature of any Commissioner or registrar of the Court, and of the seal of the Court, subscribed or attached to any judicial or official proceeding or document to be made or signed under the provisions of this act."

238. "A copy of a declaration of insolvency under this act, purporting to be certified by the Lord Chancellor's Secretary of Bankrupts or any of his clerks as a true copy, shall be received as evidence of such declaration having been filed."

239. Copy of petition under Insolvent Debtors' Act in England, or in India, to be admitted as evidence. (1 & 2 Vict. c. 110, s. 105, and 11 & 12 Vict. c. 21, s. 74.)

240. "A copy of the *London Gazette* and of any newspaper containing any such advertisement as is by this act directed or authorized to be made therein respectively shall be evidence of any matter therein contained, and of which notice is by this act directed or authorized to be given by such advertisement; and all proceedings or notices required by this act to be inserted in the *London Gazette* shall be marked with the seal of the Court from which such proceedings or notices shall be issued and certified by one of the registrars of the said Court."

241. Provisions of Lord Denman's Act (6 & 7 Vict. c. 85) to be applicable to proceedings under this act or any question arising thereupon.

242. On death of witness, office copy of deposition to be evidence, as in 5 & 6 Vict. c. 122, s. 25.

243. "Affidavits to be made or used in matters of bankruptcy, or in any matter or proceeding whatever under this act, shall and may be sworn before the Court, or any Commissioner, Registrar, or Master thereof, or before a Master in Ordinary or Extraordinary of the High Court of Chancery, or before any clerk of affidavits, assistant clerk, or second assistant clerk of affidavits of the High Court of Chancery, or in Scotland or Ireland before such Master Extraordinary aforesaid, or before a magistrate of the county, city, town, or place where any such affidavit shall be sworn, or elsewhere before a magistrate and attested by a notary, or before a British minister, consul, or vice-consul."

244. Affidavit of prisoner may be sworn before visiting justice or keeper of prison. (8 & 9 Vict. c. 127, s. 7.)

245. Evidence may be taken *visâ voce* or upon affidavit. (5 & 6 Vict. c. 122, s. 68, and 6 Geo. 4, c. 16, s. 46.)

246.^{*} Bankrupt and bankrupt's wife to be examined upon declaration instead of oath. (8 & 9 Vict. c. 48.)

Solicitors.

247.^h "Every solicitor of the High Court of

Chancery heretofore or hereafter duly admitted as a solicitor of the Court of Bankruptcy in manner directed by the statute passed in the parliament holden in the sixth and seventh years of the reign of her present Majesty, intitled 'An Act for consolidating and amending several of the Laws relating to Attorneys and Solicitors practising in England and Wales,' and subject to the provisions in the same act, may appear and plead in any proceedings in the Court, without being required to employ counsel; and in case any person, not being such solicitor, shall practise in the Court as a solicitor, he shall be deemed guilty of a contempt of Court, and be liable to all the penalties incident thereto."

Costs.

248. The 1 & 2 Vict. c. 110, ss. 18, 19, 20, so far as the same relate to orders of the Lord Chancellor, or of the Court of Review therein referred to, in matters of bankruptcy, and the powers given by the same act to the Lord Chancellor and the said Court of Review in matters of bankruptcy, shall extend to and be applicable to orders of the Lord Chancellor and of the Vice-Chancellor in matters of bankruptcy under this act.

249. "The Court may in all matters before it award such costs as to such Court shall seem fit and just; and in all cases in which costs shall be so awarded against any person, it shall and may be lawful for such Court to cause such costs to be recovered from such person in the same manner as costs awarded by a rule of any of the Superior Courts at Westminster may be recovered, and that the like remedies may be had upon an order of such Court for costs as upon a rule of any of the said Superior Courts for costs."

250. "Every person summoned to attend before the Court as a person known or suspected to have any of the estate of the bankrupt in his possession, or who is supposed to be indebted to the bankrupt, shall have such costs and charges as the Court in its discretion shall think fit; and every witness summoned to attend before the Court shall have his necessary expenses tendered to him in like manner as is now by law required upon service of a subpoena to a witness in an action at law.

Offences against the Bankrupt Laws.

251. Bankrupt not surrendering, or not delivering up books, &c.; or removing, concealing or embezzling estate, guilty of felony and liable to transportation. (5 & 6 Vict. c. 122, s. 32.)

252. Bankrupt destroying or falsifying books, &c., guilty of a misdemeanour, and liable to imprisonment for three years. (5 & 6 Vict. c. 122, s. 34.)

253. Bankrupt, within three months preceding his bankruptcy, obtaining goods on

^{*} A bankrupt and his wife are still to be the only persons expressly exempted from the obligation of an oath.

^h This clause puts an end to the doubts

suggested as to the right of solicitors, which was, as we contended, erroneously supposed to have been affected by the repealing section of the 6 & 7 Vict. c. 73.

credit under false pretence of dealing in the ordinary course of trade, guilty of a misdemeanor, and subject to two years' imprisonment. (5 & 6 Vict. c. 122, s. 35.)

254. Punishment of false evidence, or swearing or affirming anything false, as in 5 & 6 Vict. c. 122, s. 11.

255. Court may direct prosecution to be instituted. (5 & 6 Vict. c. 122, s. 36.)

256. "If at the sitting appointed for the last examination of any bankrupt, or at any adjournment thereof, it shall appear to the Court that the bankrupt has committed any of the offences hereinafter enumerated, the Court shall refuse to grant the bankrupt any further protection from arrest; and if at any sitting or adjourned sitting for the allowance of the certificate of any bankrupt it shall appear that he has committed any of such offences, the Court shall refuse to grant such certificate, or shall suspend the same for such time as it shall think fit, and shall in like manner refuse to grant the bankrupt any further protection."

Offences referred to:

"First.—If the bankrupt shall at any time after the issuing of the fiat or filing of the petition for adjudication of bankruptcy, or within two months next preceding the issuing of such fiat or the filing of such petition, with intent to conceal the state of his affairs, or to defeat the objects of the Law of Bankruptcy, have destroyed any book, paper, deed, writing, or other document relating to his trade, dealings, or estate.

"Second.—If the bankrupt shall, with the like intent, have kept or caused to be kept false books, or have made false entries in, or withheld entries from, or wilfully altered or falsified, any book, paper, deed, writing, or other document relating to his trade, dealings, or estate.

"Third.—If the bankrupt shall have contracted any of his debts by any manner of fraud, or by means of false pretences, or shall by any manner of fraud, or by means of false pretences, have obtained the forbearance of any of his debts by any of his creditors.

"Fourth.—If the bankrupt shall at any time within two months next preceding the issuing of the fiat or the filing of the petition for adjudication of bankruptcy fraudulently, in contemplation of bankruptcy and not under pressure from any of his creditors, with intent of diminishing the sum to be divided among his creditors, or of giving an undue preference to any of his creditors, have paid or satisfied any such creditor, wholly or in part, or have made away with, mortgaged, or charged any part of his property, of what kind soever.

"Fifth.—If the bankrupt shall at any time after the issuing of the fiat or the filing of the petition for adjudication of bankruptcy, and with intent to diminish the sum to be divided among his creditors, or to give an undue preference to any of his creditors, have concealed from the Court or his assignees any debt due to or from him, or have concealed or made

away with any part of his property, of what kind soever.

"Sixth.—If the bankrupt shall, under his bankruptcy, or at any meeting of his creditors within three months next preceding the issuing of the fiat or the filing of the petition for adjudication of bankruptcy, have attempted to account for any of his property by fictitious losses or expenses.

"Seventh.—If the bankrupt shall, within six months next preceding the issuing of the fiat or the filing of the petition for adjudication of bankruptcy, have put any of his creditors to any unnecessary expense by any vexatious or frivolous defence or delay to any suit for the recovery of any debt or demand provable under his bankruptcy, or shall be indebted in costs incurred in any action or suit vexatiously brought or defended.

"Eighth.—If the bankrupt shall, at any time after the issuing of the fiat or the filing of the petition for adjudication of bankruptcy, have wilfully prevented or withheld the production of any book, paper, deed, writing, or other document relating to his trade, dealings, or estate.

"Ninth.—If the bankrupt shall, during his trading, have wilfully and with intent to conceal the true state of his affairs, have omitted to keep proper books of account; or shall wilfully, and with intent to conceal the true state of his affairs, have kept his books imperfectly, carelessly, and negligently."

257. "The assignees for the time being of the estate and effects of any bankrupt, when the accounts relating to his estate shall have become records of the Court, shall be deemed judgment creditors of such bankrupt for the total amount of the debts which shall by such accounts appear to be due from him to his creditors; and every creditor of any bankrupt, immediately after the proof of his debt shall have been admitted, shall be deemed a judgment creditor of such bankrupt to the extent of such proof; and the Court, when it shall have refused to grant the bankrupt any further protection, or shall have refused or suspended his certificate, shall, on the application of such assignees or of any such creditor, grant a certificate under the seal of the Court, in the form contained in Schedule B. a. to this act annexed, and every such certificate shall have the effect of a judgment entered up in one of her Majesty's Superior Courts of Common Law at Westminster until the allowance of the certificate of conformity of such bankrupt; and the assignees or the creditor to whom, according to such certificate, the bankrupt shall be indebted as therein mentioned, shall be thereupon entitled to issue and enforce a writ of execution against the body of such bankrupt; and the production of any such certificate to the proper officer of any such Superior Court shall be sufficient authority to him to issue and seal such writ, and it shall be lawful for such Superior Courts to make such orders and rules in that behalf as to them shall seem fit: provided always, that every such last-mentioned

certificate shall be deemed to have been cancelled and discharged by the allowance of the certificate of conformity of such bankrupt from the time of such allowance; provided also, that no execution by virtue of any certificate which shall be granted to any creditor or assignees as aforesaid shall be issued, nor shall any such certificate or execution in any manner affect any estate or effects which shall come to or be acquired by the bankrupt, after the allowance of his certificate of conformity."

258. "The assignees for the time being may issue and enforce execution upon any such certificate as last aforesaid as fully to all intents and purposes as the assignees to whom such certificate shall have been originally granted."

259. "If any bankrupt shall be taken in execution after the refusal of protection, or after the refusal or suspension of his certificate, he shall not be discharged from such execution, until he shall have been in prison for the full period of one year, except by order of the Court: Provided always, that this enactment shall not take effect until after the expiration of six months from the commencement of this act, and then only against such persons as shall have been adjudged bankrupt under this act, and for offences committed after the commencement of this act."

260. Any person refusing to be sworn, or refusing to answer, or not fully answering, or refusing to sign examination, or to produce books, &c., may be committed. (6 Geo. 4, c. 16, ss. 24, 34, 36, 37.)

261. Questions to be particularly specified in warrant. (6 Geo. 4, c. 16, s. 39.)

262. Assignees under fiats issued on or prior to 11th November, 1842, retaining unclaimed dividends, to be liable to pay 20l. per cent. beyond the sum retained, and costs at the discretion of the Court. (5 & 6 W. 4, c. 29, s. 7.)

263. Official assignee not filing certificate of unclaimed dividends, subject to penalty. (6 & 7 W. 4, c. 27, s. 7.)

264. Such unclaimed dividends, &c., to be carried to the unclaimed dividend account. (6 & 7 W. 4, c. 27, s. 8.)

265. Assignee disobeying direction to pay or invest money and retaining it or permitting co-assignee to retain or employ it, to be charged with 20l. per cent. (6 Geo. 4, c. 16, s. 104.)

266.^a "If any person shall disobey any rule or order of the Court duly made by such Court for enforcing any of the purposes and provisions of this act, or of any other act hereafter to be in force relating to the subject-matters of this act, or made or entered into by consent of such person for carrying into effect any of such purposes or provisions, the Court may, by warrant in the form contained in schedule B b. to this act annexed, commit the

person so offending to the Queen's prison, or to the common gaol of any county, city, or place where he shall be found, or where he shall usually reside, there to remain without bail or mainprize until such Court, or the Vice-Chancellor or the Lord Chancellor, shall make order to the contrary."

267. "If the debt stated by the petitioning creditor in his affidavit or in his petition for adjudication, and verified by affidavit, to be due to him from any trader, shall not be really due, or if after a fiat issued, or petition for adjudication of bankruptcy filed, it shall not have been proved that the person against whom such fiat has been issued or petition filed had committed an act of bankruptcy, and was a trader at the time of the issuing of the fiat or filing of such petition, and it shall also appear that such fiat was issued, or that such petition was filed, fraudulently or maliciously, the Court shall and may, upon petition of the person against whom any such fiat or petition was so issued or filed, examine into the same, and order satisfaction to be made to him for the damages by him sustained."

268. Penalty on petitioning creditor compounding with trader after the bankruptcy, as in 6 Geo. 4, c. 16, s. 8.

269. Penalty on persons concealing bankrupt's effects, and allowance to persons making discovery thereof.

270. Penalty for obtaining money, goods, &c., as an inducement to forbear opposition or to consent to allowance of certificate. (5 & 6 Vict. c. 122, s. 41.)

271. Penalty on officers, &c., taking fees not allowed by act. (1 & 2 W. 4, c. 56, s. 8.)

272. "Any person who shall insert or cause to be inserted in the *London Gazette*, or in any newspaper, any advertisement under this act without authority, or knowing the same to be false in any material particular, shall be guilty of a misdemeanor."

273. "If any person shall forge the signature of any Commissioner, or registrar, or of the accountant, Master, or other officer of the Court, or shall forge or counterfeit the seal of the Court, or knowingly concur in using any such forged or counterfeit signature or seal, for the purpose of authenticating any such proceeding or document, or shall tender in evidence any such proceeding or document with a false or counterfeit signature of any such Commissioner, registrar, accountant, Master, or other officer, or a false or counterfeit seal of the Court, subscribed or attached thereto, knowing the same signature or seal to be false or counterfeit, every such person shall be guilty of felony, and shall be liable to the same punishment as any offender" under the 8 & 9 Vict. c. 113.

274. Penalty on gaoler for escape. (See 6 Geo. 4, c. 16, s. 38.)

275. Application of forfeitures. (5 & 6 Vict. c. 122, s. 82.)

276. Definition of terms "Lord Chancellor," "Vice-Chancellor," "The Court," "Court of

^a This clause is taken from the Joint-Stock Companies' Remedies Act, (7 & 8 Vict. c. 111, s. 19,) but it is altered in some important particulars.

¹ "The Court" means the Court of Bank-

Bankruptcy," "Senior Commissioner," "Fiat" and "Fiat in Bankruptcy," "Annulling," "Month," "Assignees," "Oath," "Bank of England," number and gender.

"In all cases in which any particular number of days is in any article prescribed, or shall be mentioned in any rule or order of Court which shall at any time be made under this act, for the doing of any act, or for any other purpose, the same shall be reckoned, in the absence of any expression to the contrary, exclusive of the first and inclusive of the last day, unless the last day shall happen to fall on a Sunday, Christmas Day, Good Friday, Monday or Tuesday in Easter week, or a day appointed for a public fast or thanksgiving, in which case the time shall be reckoned exclusive of that day also."

277. Act to extend to aliens and denizens.

278. Act may be amended, &c.

SCHEDULES.

A. Act and parts of acts repealed. (See *ante*, p. 298, for enumeration of statutes in this schedule.)

B. Return by official assignee, showing state of every bankruptcy under his charge and not finally wound up.

C. Stamp duties on documents. (See *ante*, p. 300, where this schedule is printed.)

D. Declaration of insolvency by trader.

E. Writ of summons to be served on member of parliament.

F. Affidavit for summoning a trader debtor.

G. Particulars of demand and notice requiring payment.

H. Summons of trader debtor.

I. Admission of debt by trader debtor.

J. Deposition by trader debtor that he has good answer to creditors' demand or some part thereof.

K. Form of bond to pay *admitted* demand.

L. Admission of debt by trader debtor signed out of Court.

M. Petition by a creditor for adjudication of bankruptcy.

N. Affidavit of truth of allegations in petition.

O. Petition by a trader for adjudication of bankruptcy against himself.

P. Order to prosecute a petition for adjudication of bankruptcy in a particular district.

Q. Order to consolidate proceedings, or to impound any petition for adjudication of bankruptcy and the proceedings thereunder, or any part thereof.

R. Order to transfer a petition for adjudication of bankruptcy, &c., from the Court in one district to the Court in another district.

S. Form for General Docket Book.

T. Order for petition for adjudication of

rupty and any Commissioner or Commissioners of such Court acting as a Court under this act.

¹ See in the act, but it is a manifest mistake, and should have been printed "disputed."

bankruptcy to be proceeded in on a substituted debt.

U. Order annulling adjudication.

V. Search-warrant under hand and seal of Commissioner.

A a. Petition for arrangement.

A b. Affidavit in support of petition for arrangement.

A c. Certificate to petitioning trader.

A d. Certificate to official assignee.

B a. Certificate to assignees or to a creditor to entitle them to issue writ of execution.

B b. Warrant against person disobeying any rule or order of Court.

NOTICES OF NEW BOOKS.

Form of Process in Civil Causes before the Sheriff Courts of Scotland. By JOHN MACLAURIN, W. S., Sheriff-Substitute of Argyllshire. Second Edition. Vol. 1. Edinburgh: Oliver and Boyd; London: Simpkin, Marshall, and Co. 1848. Pp. 304.

WE are always willing to hail the meritorious labours of our brethren, whether in Scotland, Ireland, or the Colonies; and therefore find space for a brief notice of Mr. Maclaurin's Treatise on the process and proceedings in Civil Causes in the Sheriffs' Courts of Scotland. From the title-page, it might be inferred that the work comprised merely the *Forms* of proceedings in these Courts; but in truth it treats of their constitution and jurisdiction, and mode of conducting the business as well in Court as in the Sheriff Clerks' Office. It also treats of ordinary and summary actions, and of the various modes of proof.

Mr. Maclaurin's book is very ably written, well arranged, and so far as we can judge, his materials have been carefully collected and accurately stated.

The author observes that,—

"If public opinion be the test of excellence, there can be no doubt that within the last 20 years the procedure in Sheriff Courts has undergone a signal improvement. Not only has the extent of their ordinary business been greatly increased, but their jurisdiction has been extended to various important matters, formerly assigned exclusively to the Court of Session. That the forms established by recent enactments are most beneficial in their tendency, and calculated to promote the usefulness and efficiency of inferior judicatories, is unquestionable. It may be, that some scope for amendment, in a few branches of these forms, still remains; but looking at the salutary results of the present scheme, too much caution in the introduction of changes can hardly be exercised. Above all, it is to be

hoped that the suggestion so often made, to introduce Jury Trial in Civil Causes into these Courts, may not be readily adopted. That mode of trial, it is conceived, is a system based solely on popular delusion, and which, in the eyes of almost all rational men of business, has caused the deciding of a suit involving controverted facts, to approximate in some measure to a game of chance.

"It is in the hope of contributing to some small extent, in aiding the practitioner to carry out the provisions of the recent Acts of Sederunt applicable to Sheriff Courts, and facilitate their working, that the Author has been induced to prepare the present impression—a task in which he has also been encouraged by the public patronage bestowed on the former Edition. His sole aim has been to render the work practically useful, by confining it entirely to an exposition of the forms established by the existing acts, and by avoiding speculative discussion on supposed legislative improvements.—a course entirely foreign to the subject in view."

But few on this side the Tweed will agree with Mr. Maclaurin, that the Trial by Jury is "based solely on popular delusion." Whatever theoretical objections the system may be liable to, it is on the whole practically beneficial. Looking at some recent cases, perhaps a large (certainly not a bare) majority might be an improvement; but the alteration would apply only, we believe, to one "hard case" in a thousand. Whether it is worth while to commence a change which may lead to greater evils than it removes, demands grave consideration.

The evidence in these Courts, it appears, is taken in writing, the supposed advantages of which are thus stated and contrasted with the *vivâ voce* practice:—

"After a full precognition has been carefully taken in an Inferior Court process, and been submitted with the Record to a legal adviser, he can in general tell, with a degree of precision approaching to certainty, the result of a proof. But let the same opinion be asked upon a precognition taken preparatory to a Jury Trial, the prudent lawyer, while he gives his own opinion, will caution his client that the nature of a Jury's verdict is beyond the power of ordinary calculation. The danger of a witness breaking down while no time is afforded for supplying his place—the risk of any incompetent evidence being received, or good evidence rejected—of the charge being erroneous in any one particular—or of the verdict being in any respect contrary to evidence,—are only some of the many contingencies which are constantly occurring, and any of which may set aside a verdict and demolish the whole proceedings as if no trial had ever taken place. The parties, in such an event, are left to go to trial of new, and are compelled to incur, a second time, the same heavy expenses already borne by them, being

at the same time subjected to the identical hazard as before, of an abortive verdict.

"This hazardous procedure is unknown in Inferior Courts. The witnesses' oaths being reduced to writing continue permanently available. If doubts exist on the competency of any evidence, it may be sealed up, or, if this has not been done by the Commissioner, it may afterwards be expunged, without affecting the remaining depositions, which will continue to form the grounds of decision."

We apprehend that the expense of taking written depositions would not suit the modern taste in England of *cheap and expeditious* law; yet we admit that our Small Debt Courts are as far as ever from perfection in the administration of justice. The last costly experiment has not brought us a step nearer to the temple of justice.

SUGGESTED PROFESSIONAL IMPROVEMENTS.

PRELIMINARY EDUCATION OF ARTICLED CLERKS.

To the Editor of the Legal Observer.

SIR,—During the last Long Vacation, I addressed you on some of the questions relating to the respective Provinces of the Bar and the Attorneys; and subsequently to that time I observed that you repeatedly discussed various important points concerning the interests of the profession generally and the attorneys in particular. I may have occasion hereafter to offer you some remarks on the topics in question; but for the present I am desirous of suggesting for the consideration of your readers,—whether the time has not arrived for taking a further step, as well in the *general*, as the *legal*, education of the candidates who seek admission on the Roll of Attorneys.

I have attentively considered the numerous letters that have recently appeared in your pages on "The Status of Attorneys," and submit that enough has been said on that subject,—except in regard to the causes of the *unpopularity of lawyers*, upon which I should be glad to read your own opinions more at large than you have yet stated them.

But whatever may be the cause, and whatever the extent (great or small) of the disesteem in which the vocation of an attorney may be held, there can be no doubt that a higher degree of classical and general education would raise the character of that branch of the profession in public estimation. The several branches of the medical profession have been eminently advanced by the exten-

sive learning and knowledge which they must acquire in order to pass their examinations and obtain the right to practise.

I understand that in France no man can enter the profession of the law who has not taken a university degree. In other parts of the Continent a very extensive course of education is deemed essential before commencing the study of the law. In Scotland, before entering on the clerkship to a writer to the signet, the pupil must undergo an examination in the classics and other branches of a liberal education. The proctors at Doctors' Commons also require certificates of a certain amount of classical attainment before they receive an articulated clerk.

Without going so far as to require that the articulated clerk of an attorney and solicitor of the Superior Courts should be a graduate of one of our universities, I think it would not be unreasonable that he should be able to pass an examination to a moderate extent in Latin, French, and Mathematics; and that a certificate from competent examiners should be produced to the Master of the Court upon the enrolment of the articles.

If this suggestion were adopted, it would be sufficient, perhaps, to require only four, instead of five years' service, whilst a graduate would still be entitled to admission after three years' service. The examination should be conducted by the professors or teachers at certain colleges or public schools, but under the presidency of members of the profession, who would judge of the extent to which the examination should from time to time be carried.

Looking at the diminution of the business in the Superior Courts, it may also deserve consideration, whether it would not be expedient to limit each practitioner to one articulated clerk, and to authorise those only who are of a certain standing in practice to take an articulated clerk. These modes of checking the injurious increase of the profession and rendering the persons admitted more competent for the discharge of their duties, will be far preferable to the compulsory payment of a large premium,—though it is probable that the improvements referred to would lead to a gradual increase in the fee, proportioned to the advantages which might be anticipated.

I venture to offer these suggestions, which I believe will meet with the cordial approval of many of my brethren, both in the country and

in town; and, with your permission, will hereafter state some details for carrying them into execution, in case the suggestions should receive the sanction of your readers. ATTORNATUS.

PRACTICE OF RETAINERS.

REPORTS OF CASES RELATING TO RETAINERS.

1. In the case of *Earl Cholmondeley v. Lord Clinton*, 19 Ves. 261 :

Sir Arthur Pigott said, "If a counsel having advised upon pleadings and evidence, not being retained, the next day receives a retainer on the other side, which he is not only entitled, but, as a servant of the public, bound to receive, there is no practice requiring notice to be given of that."

Sir Samuel Romilly said, "I do not understand the rule as to counsel to be as it is represented. I conceive that a counsel consulted confidentially, cannot be counsel on the opposite side without giving notice. Great laxity, I admit, prevails as to retainers; a difficulty when it occurs is usually referred to some other counsel, and the consequence is, that there is no general rule."

The Lord Chancellor Eldon said, "The practice at the bar in my time was this: if a retainer was sent by a party, against whom the counsel had been employed, the retainer being in a cause between the same parties, the counsel, before accepting it, sent to his former client, stating the circumstance and giving him the option. That has, I believe, been relaxed; and the course now is, as has been represented at the bar. I do not admit that he is bound to accept the new brief. My opinion is, that he ought not, if he knows anything that may be prejudicial to the former client, to accept the new brief, though that client refused to retain him."

2. In the case of *Baylis v. Grout*, 2 Myl. & K. 316 :

A motion was made on the part of the defendants, to restrain Mr. Kindersley from acting as counsel for the plaintiffs, from whom he had received a retainer, on the ground that Mr. Kindersley had drawn the answer to the bill, and had otherwise acted in the progress of the suit on behalf of the defendants.

Mr. Bickersteth said, "That although the law or practice of retainer was a subject not altogether free from obscurity, and there was some doubt as to the retaining of particular counsel, yet if any rule upon this subject could be held to be clear and reasonable, it was where a counsel had, by reason of the part he had taken in a particular suit, possessed himself of a knowledge of the case of the party for whom he had previously acted."

The Master of the Rolls, Sir C. Pepys, said, "That as the defendant had not taken the usual means of securing the professional assistance of Mr. Kindersley, the Court could not interfere. The case cited (*Cholmondeley v.*

dishonesty in the present case. It was the duty of a receiver to keep a simple account of moneys received and paid, which had not been done, but omissions had taken place, and a sum of 1,200*l.* had been entered at a period subsequent to its receipt. The receiver must therefore be discharged, and the accounts be passed,—the costs to be costs in the cause.

Vice-Chancellor Knight Bruce.

Ex parte Rector of Loughton, in re London and Birmingham Railway Company. June 12, 1849.

RAILWAY.—GLEBE LANDS.—COSTS OF SECOND RE-INVESTMENT.

Where a railway company had taken glebe lands for the purposes of their railway, and paid the money into Court, and there had been an investment in land of part of the purchase-money, held, that they were liable for the costs of the investment of the residue.

THIS petition was presented by the rector of Loughton, Bucks, and prayed that, upon executing a proper conveyance of lands purchased by the railway, certain money in Court might be ordered to be re-invested and the residue paid out to the petitioner, and that the company might be ordered to pay the costs of the re-investment in land and of the conveyance. The property sold consisted of 6 acres of glebe land, and the purchase-money, to the amount of 2,306*l.* 1*s.* 9*d.*, had been invested in consols. Nearly the whole had been re-invested in the purchase of land; there remaining a sum of 20*l.* 9*s.* 5*d.* By the 80th sect. of the 8 Vict. c. 18, it is provided, that "the costs of one application only for re-investment in land shall be allowed, unless it shall appear to the Court of Chancery in England, or the Court of Exchequer in Ireland, that it is for the benefit of the parties interested in the said monies that the same should be invested in the purchase of lands, in different sums and at different times, in which case it shall be lawful for the Court, if it think fit, to order the costs of any such investments to be paid by the promoters of the undertaking."

Forster in support of the petition; *Speed* contra.

The *Vice-Chancellor* said, that it would not be a forced construction of the act to treat this as a simple case of a second investment, and to pay the residue to the petitioner. The company must therefore, under the 80th section of the 8 Vict. c. 18, pay the costs as prayed.

Vice-Chancellor Wigram.

Marquis of Londonderry v. Ovingdon.
July 16, 19, 1849.

SUIT FOR TITHES.—PERPETUAL CURATE.—PARTIES.

In a suit by an impropriate rector against the owners and occupiers of burgage tenements for tithes, held, that the perpetual curate is not a necessary party, and the bill as

against him was by consent dismissed with costs.

THIS suit was instituted, in respect of tithes, by the impropriate rector of the parish of St. Giles, in the county of Durham, against the owners and occupiers of certain allotments of land made under recent enclosure acts.

The *Solicitor-General* and *Bailiff* for the plaintiff; *Wood* and *Elderton*, for the defendants, contended that, as the perpetual curate was interested in the question, he ought not to be made a party; *Bates* for the curate.

The *Vice-Chancellor*, after taking time to consider, held, that the perpetual curate was not a necessary party, and upon the consent of the plaintiff's counsel, dismissed the bill as against the curate, with costs.

Queen's Bench.

(Before the Four Judges.)

Ex parte Simpson. May 28, June 11, 1849.

MUNICIPAL CORPORATION ACT.—COMPENSATION TO TOWN CLERK.—MANDAMUS.

*Upon the dismissal of a town clerk on the passing of the Municipal Corporations' Act, the mayor, &c., of the borough granted an annuity of 30*l.* as compensation, which was, on appeal to the Lords of the Treasury, increased to 50*l.* 18*s.* 2*d.* to commence from the date of the passing of the act. The corporation intimated to the Treasury that the town clerk had remained in office until 20th January, 1844. The order was altered by the insertion of this date as the period from which the annuity was to be payable, but it did not appear by whom the alteration was made. A rule for mandamus was made absolute calling on the corporation to pay the increased annuity from the year 1835.*

A RULE nisi had been obtained on behalf of Mr. Charles Simpson, late town clerk of the borough of Lichfield, calling on the corporation of the borough to show cause why a mandamus should not issue commanding them to execute a bond to secure to him an annuity of 50*l.* 18*s.* 2*d.* from the 9th September, 1835, as compensation for the loss of his office as clerk. It appeared that on the passing of the Municipal Corporations' Act, Mr. Simpson was removed from office and an annuity awarded him of 30*l.*, which was, on appeal to the Lords of the Treasury, increased to the sum of 50*l.* 18*s.* 2*d.* The order of the Lords of the Treasury was returned to the board with an intimation that Mr. Simpson had been continued in office until 20th January, 1844; whereupon the date was erased, but by whom did not appear, and it was ordered that the annuity was to commence from the 20th Jan. 1844, and against this order the present application was made by way of appeal.

Talfourd, Q. S., now showed cause against the rule, which was supported by *Whately*, citing Comyn's Dig., title Arbitrament, 16 E., where an arbitrator having made his award was not allowed to make another.

The Court held, that, under the circumstances of the case, the rule ought to be made absolute.

Rule accordingly.

Court of Common Pleas.

Garrett v. Tuck. June 25, 1849.

DOWER.—OUTSTANDING TERM.—STATUTE OF LIMITATIONS.

In an action of dower, the tenant set up an outstanding term of 1,000 years, and also that the demandant had claimed dower of more acres than she was entitled to: Held, that she was entitled to claim dower in any lands of the tenant in the parishes named, and held also, that the outstanding term was not extinguished by the 3 & 4 Wm. 4, c. 27, so as to render the lands covered by the term liable to dower. Doe d. Jacobs v. Phillips, 16 Law J., Q. B., overruled.

THIS was an action to recover dower in certain lands in Norfolk, to which the tenant pleaded, first, that the demandant's husband was living at the issuing of the writ; and secondly, that the husband was never seised of such an estate in the lands in question as could give the demandant a legal claim to dower other than of the reversion. The demandant obtained a verdict on the first issue, and the tenant on the second, with leave, however, reserved to the demandant to move to enter the verdict for her on the second issue, and a rule nisi had accordingly been granted. It was alleged by the tenant, that the lands in question were subject to a term of 1,000 years created by way of mortgage in 1739. This mortgage was paid off in 1750, and the lands conveyed with an assignment of the term to James Roberts, in trust to attend the inheritance, and the lands were afterwards devised to James Robert Garratt, the demandant's husband, who in 1813, assigned the lands to Robert Tuck, the tenant, and the outstanding term to William Farrar, in trust to attend the inheritance on behalf of the tenant.

It was contended on behalf of the tenant that the demandant had asked dower of more acres than the tenant had subject to dower. It was urged for the demandant that the term had been surrendered to attend the inheritance, and was, under the 3 & 4 Wm. 4, c. 27, extinguished by the lapse of time.

The Court said, that the number of acres mentioned in the writ was not material, as the demandant had a right to demand dower of any lands of the tenant in the parishes named, and which, on the other hand, the tenant might show were covered by the outstanding term. There had been exchanges made under enclosure acts, and the lands had been conveyed to similar uses and liabilities, but no mention was made of the term. It must not however be presumed, that the term was surrendered unless it could be proved that there was such a dealing with the land as that no reasonable man would have so dealt with it without such a surrender of the term. The 3 & 4 Wm. 4, c. 27, did not apply to the case of

an unsatisfied term of years assigned to attend the inheritance. The object of the act was to operate between purchaser and purchaser, having adverse interests, and not between trustee and *cestui que trust*, whose interests were identical. It was clear from the second, third, and seventh sections, that the right of entry in the case of a tenancy at will accrued from the determination of the tenancy at will, and not from the commencement of the estate, and a *cestui que trust* is not to be deemed to be a tenant at will within the seventh section. The time of limitation, therefore, does not run from the date of the commencement of the estate, but from the determination of the tenancy. The case of *Doe d. Jacobs v. Phillips*, 16 Law J., Q. B., 269, which was at variance with this view, was not a binding authority. The term set up, therefore, was not extinguished under the statute by lapse of time, and the verdict for the defendant under the second issue must stand.

Rule discharged.

Prerogative Court.

Williams v. Jones. June 19, 1849.

CANCELLING WILL.—REMOVAL OF FIRST SHEET.—INTESTACY.

Where a testator obtained his will from the custody of his executor, and placed it in a bureau and locked it up, and upon his death, the first sheet, conveying the estate in trust and disposing of the real estate, was missing, and there was no suspicion of its destruction by other parties, held, that it amounted to a cancellation of the will, and the Court refused probate and pronounced the deceased intestate.

THIS was a suit on behalf of the widow of Mr. William Williams, of Langthorpen, North Wales, against Mr. Jones, an executor under the will. The deceased, on the 16th October and 20th Nov. 1845, made a will and codicil, and gave his wife a life interest in the property to the amount of 250*l.* personal, and 90*l.* a year real estate, and the reversion to John Lloyd, one of his nephews, and died on Jan. 7, 1848. By the codicil, some after-acquired property was given to the widow absolutely. It appeared that the deceased had, about 12 months before his death, obtained the will from one of the executors for the purpose of re-consideration, and on his death it was found in a bureau locked up, with the exception of the first sheet, containing the appointment of the executors and trustees and the devise of the bulk of the estate.

Drs. *Addams* and *R. Phillimore* for the defendant, the executor under the will, in support of the documents, cited *Davis v. Davis*, 2 Add. 223; and *Saunders v. Saunders*, 6 Notes Ca. 518.

The *Queen's Advocate* and *Dr. Jenner*, for the widow, contended that the deceased died intestate.

The Court held, that the will had been cancelled by the testator, as the sheet removed conveyed all the estate in trust and disposed of

the real estate. There was no suspicion of its having been destroyed by any other person and the Court would, therefore, presume that it was destroyed by the deceased. The Court, therefore, pronounced against the will.

Court of Bankruptcy.

(*Coram Mr. Commissioner Fane.*)

Anon. July 27, 1849.

DEBTOR AND CREDITOR ARRANGEMENT ACT.—PETITION.—PRACTICE.

Held, that in a petition under the 7 & 8 Vict. c. 70, the time of contracting the debt must be specified or the petition will not be entertained,—as under the second section the Commissioner can only proceed if it appear that at the time of contracting the debt the petitioner had reasonable probability of paying the same.

In a case under the Debtor and Creditor Arrangement Act, (7 & 8 Vict. c. 70,) Mr. Commissioner Fane said, that a debtor not being a trader within the meaning of the statutes relating to bankruptcy, might, under the 7 & 8 Vict. c. 70, with the concurrence of one-

third in number and value of his creditors, (testified by their signing his petition,) present a petition to the Court of Bankruptcy with a view to a private arrangement of his affairs. Upon the presentation of such petition one of the Commissioners is, under section 2, privately to examine into the matters of the said petition, and if he shall be satisfied that the debts have not been contracted without reasonable probability at the time of contract of being able to pay the same, the Commissioner is directed to take certain proceedings in order to carry the petition into effect. The Commissioner, however, cannot form a judgment as to the reasonable probability of the petitioner at the time of contract to pay the debt unless such time of contracting the liability is specified in the petition. In all cases, therefore, where such is not done, I must decline to proceed. The concession to the debtor, under this act, of avoiding publicity, should only be extended to cases where the inability to meet the debt is attributable to misfortune, and not to a case where there has been misconduct in the debtor's contracting the debt without reasonable probability at the time of his being able to pay the same.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Equity.

PLEADING.

[For the previous Sections of this Series of the Digest in the present Volume, see,—

Privy Council :

Appeals, 83.

House of Lords :

Appeals, 171.

Courts of Bankruptcy, 211.

Courts of Equity :

Law of Costs, 234.

Law of Wills, 254.

Construction of Statutes, 271.

Law of Property and Conveyancing, 293.]

CORPORATION.

Trading company.—Demurrer.—A demurrer to a bill by one of the shareholders of an incorporated mining company, on behalf of himself and all the other shareholders, except the members of the governing body, who were defendants, impeaching several transactions of that body, which it appeared had been sanctioned by majorities at general meetings of the shareholders, and amongst which was a project to vest all the property of the company in trustees for the purpose of liquidating its affairs, was allowed, notwithstanding some vague and general charges of fraud and misconduct on the part of the defendants, and an allegation that, by the constitution of the company, no one but

the governing body could convene a general meeting; the specific acts complained of not being such as, in the opinion of the Court, it was incompetent to a majority of shareholders to sanction. *Lord v. Governor and Company of Copper Miners*, 2 Phill. 740.

And see *Demurrer*, 4.

DEMURRER.

1. *Patent.*—A patentee filed a bill against a person whom he had licensed to use his invention, and the partner of the latter, for an account on the footing of the licence, and for an injunction to restrain the defendants from using the invention, in case they should dispute his right to the payments reserved by the licence, on the ground that the licence became void. A general demurrer to the bill was overruled. *Haddon v. Smith*, 416 Sim. 2.

2. *Allowances of railway scrip.*—*Joinder of plaintiffs.—Bubble company.*—Three several allottees of shares in an intended railway company filed a bill against the directors, alleging that the deposit on the shares allotted to them respectively had been wholly paid by one of them, and that they were jointly interested in them; and further alleging circumstances to show that the prospectus, on the faith of which the deposit was paid, contained untrue and delusive statements, which had been put forward by the defendants without any inquiry into their truth, and that the directors had kept back shares for the purpose of selling them at a premium. The bill charged that this was t

purpose they had in view in carrying on the scheme, and not the benefit of the public ; and prayed for a return of the deposit, with interest. A demurrer for misjoinder of plaintiffs and want of equity was overruled. *Cridland v. Lord De Mauley*, 1 De G. & S. 459.

3. *Railway Company.—Contract not legally executed.—Trust.*—A contractor sent in a tender to a railway company for the execution of part of the works, either with a double or single line of rails. He was informed, in writing, by the engineer of the company, that his tender was accepted, and that intimation was confirmed by the directors, upon his attendance at one of their board-meetings, but no document accepting the tender was executed by the company, in such a manner as to be binding at law ; nor was any conclusion ever come to whether there should be a single or a double line. The railway was afterwards abandoned, and the contractor then filed a bill seeking to have a binding contract executed by the company, or to recover from them the loss which he had sustained in preparing for the works : *Held*, upon demurrer, that he had no claim to relief in equity upon the general merits of the case ; and that an allegation, unsupported by any additional facts, that the company held money in their hands for the purpose of paying the plaintiff, and were trustees of it for his behalf, under an instrument in writing, was not sufficient to sustain the bill. *Jackson v. North Wales Railway Company*, 1 H. & T. 75.

Cases cited in the judgment : *Kirk v. Bromley Union*, 2 Phill. 640 ; *Ambrose v. Dunmow Union*, 9 Beav. 508.

4. *Misjoinder.—Right of individual shareholder to institute suit on account of injury done to corporate body.*—A shareholder in a trading company, who possessed both original and preferential shares, filed a bill on behalf of himself and all the other shareholders, except the defendants, complaining of acts done by the directors and the other defendants, injurious to the interests of the company. The suit had not been authorized by any general meeting of the shareholders, but the plaintiff alleged that it was not practicable for any parties but the directors to call such a meeting. The acts complained of consisted in improperly increasing the liabilities of the company by contracting debts and otherwise, and of giving to some of the holders of preferential shares an advantage over others, by changing their shares for debentures. The acts were held to be within the general powers of the company, and were done in consequence of, and, as the directors insisted, in accordance with, a resolution passed at a general meeting. A demurrer, on the part of the company, for want of equity, was allowed, upon the ground that an individual shareholder was not entitled to be plaintiff in a suit of such a nature ; and that the interests of the original and preferential shareholders were not so identical as to admit of such a bill being filed on behalf of both sets of shareholders. *Lord v. Copper Miners' Company*, 1 H. & T. 85.

Cases cited in the judgment : *Foss v. Harbottle*, 2 Hare, 461 ; *Mozley v. Alston*, 1 Phill. 800. See *Corporation*.

HEIR.

See *Parties*, 1.

JOINER.

See *Demurrer*, 2, 4 ; *Parties*.

MULTIFARIOUSNESS.

An individual shareholder in an insolvent joint-stock company, being sued at law by a banking firm, consisting of five partners, one of whom was also a shareholder in the company, for a debt due from the company to the bank, filed a bill against the plaintiff at law, and all the other shareholders in the company, praying that the affairs of the company might be wound up, and that, in the mean time, the action might be stayed. A general demurrer by the other four partners in the bank was allowed, on the ground that the relief prayed necessarily involved the winding up of the affairs of the bank as well as of the company, which, if it had been specifically prayed, which it was not, would have rendered the bill multifarious. *Rheam v. Smith*, 2 Phill. 726.

PARTIES.

1. *Heir.—Administration.*—Testator devised all his real estate to his widow : *Held*, (overruling *Brown v. Weatherby*, 12 Sim. 6,) that his heir was not a necessary party to a suit to administer his real estates under 3 & 4 Wm. 4, c. 104. *Bridges v. Hinzman*, 16 Sim. 71.

2. A cause cannot be set down on an objection for want of parties, under the 39th Order of August, 1841, if the objection is founded on a fact stated in the answer, but not in the bill. *Clark v. Webb*, 16 Sim. 161.

3. *Cestui que trust.—Purchaser.*—In a suit by the trustees of a composition deed to compel the assignment or to perfect the transfer of a portion of the trust property, the *cestuis que trustent* are not necessary parties ; but a purchaser, to whom the trustees had contracted to sell the property in question, is a necessary party. *Alexander v. Cana*, 1 De G. & S. 415.

PARTNERSHIP.

Bill of revivor and settlement.—A bill by the representative of a deceased partner against the surviving partner, for an account of the partnership dealings and transactions, contained an allegation that the defendant had employed and intended to employ the assets of the late partnership in carrying on the business on his own account, but prayed no relief in respect of such allegation, and the decree merely directed the ordinary partnership accounts, reserving further directions.

But on the death of the defendant some years afterwards, and before the Master had made his report under the decree, the same plaintiff filed a bill of revivor and supplement against the representatives of the late defendant, respecting the allegation above mentioned as to the employment of the partnership funds

and praying an account of the profits made thereby, in addition to the usual prayer for carrying on the accounts directed by the former decree: *Held*, (reversing the decision below) that such bill was not, in reference to the decree in the original suit, a supplemental bill in the nature of a bill of review, the new relief founded upon the allegation above mentioned not being inconsistent with that decree, but so far from it, that the accounts directed by the decree were necessary to raise the case for such new relief, and must have been directed, if both claims had been united in one suit.

The question in such cases turns upon the matter of the decree, and not upon allegations in the original bill, to which the decree does not apply. *Toulmin v. Copland*, 2 Phill. 711.

Case cited in the judgment: *Bainbrigge v. Baddeley*, 2 Phill. 705.

PATENT.

See *Demurrer*, 1.

PLEA.

Negative.—Where a plaintiff sues as executor, but the probate is insufficiently stamped, the defendant, if he pleads to the bill, ought not to state matters affirmatively, in order to show the insufficiency of the stamp, but ought to plead, simply, that the plaintiff is not executor. *Roberts v. Madocks*, 16 Sim. 55.

PURCHASER.

See *Parties*, 3.

RAILWAY.

See *Demurrer*, 2, 3.

REVIEW, BILL OF.

A bill of review, or a supplemental bill in the nature of a bill of review, is necessary where the title or subject matter of the claim has been directly adjudicated upon in a former suit by a decree declaring or assuming a right, or, in the case of a dismissal of a bill, negating it; but an order of dismissal is a bar only when the Court has thereby determined that the plaintiff had no title to the relief sought by his bill, and, therefore, the dismissal of so much of a bill as relates to an issue raised by it which is irrelevant to the relief prayed, is no bar to a new bill by the same party for a different object depending upon the same issue.

The proper test by which to try whether a bill, which recites a decree and proceedings in a former suit, is, in reference to such decree, to be considered a supplemental bill in the nature of a bill of review, is to see whether, if such decree and proceedings were omitted from the bill, they could be effectually pleaded in bar to it; for which purpose it is not sufficient that the plaintiff's claim in the second suit depends upon a determination of some issue at variance with the determination of the same issue in the former writ, unless such issue be relevant to the objects of both suits, and be raised between the parties in the same rights, and in reference to the same subject matter of claim. *Bainbrigge v. Baddeley*, 2 Phill. 705.

Cases cited in the judgment: *Davies v. Lord Browlaw*, Dick. 611; *Minor Canons of St. Paul's v. Crickett*, Wightw. 30; *Huggins v. York Building Company*, 2 Atk. 44; *Behrens v. Sieveking*, 2 Myl. and Cr. 602.

REVIVOR, BILL OF.

See *Partnership*.

SECOND SUIT.

A purchaser, from the trustees under a will of 1818, of part of the devised estates, filed a bill against the trustees, and the parties beneficially interested, suggesting that the will had been obtained by fraud, and was invalid, but praying no relief on that supposition, but only that the validity of the will might be inquired into, and that, if it should be found to be valid, the contract might be specifically performed. At the hearing, the bill was dismissed as against all the defendants, except the trustees, and that part of it which went to impeach the will was dismissed as against the trustees also, and the usual reference was directed as to title, and the Master having reported in favour of the title, a decree was ultimately made for specific performance. Some years after, the same plaintiff filed another bill against the parties in possession of the rest of the estates, under the will of 1818, reciting the former decree and proceedings; but charging that the will of 1818 had been obtained by fraud, and when the testator was incompetent, and praying that it might be set aside, and that the plaintiff might be declared entitled to the estates under a limitation in a prior will of 1815, under which, supposing the will of 1818 to be invalid, his title had just accrued: *Held*, (reversing the decision below,) the decree and proceedings in the former suit were no bar to the institution of the second, on the ground, 1st. That the issue raised by the first suit, as to the validity of the will of 1815, was not relevant to the object of that suit; 2ndly. That the two suits were not brought by the plaintiff in the same right; or, 3rdly, for the same subject matter of claim. *Bainbrigge v. Baddeley*, 2 Phill. 705.

SUPPLEMENTAL ANSWER.

Leave given, to a defendant, to file a supplemental answer, notwithstanding the information which he wished to avail himself of, had been obtained through a violation of professional confidence. *Raincock v. Young*, 16 Sim. 122.

SUPPLEMENTAL BILL.

See *Partnership*.

TRADING COMPANY.

See *Corporation*, *Demurrer*, 4.

WAIVER OF LANDLORD'S TITLE.

It is not sufficient for a party, who intends to rely upon a waiver of title, to allege upon his pleading the facts constituting the waiver; he must show how he means to use the facts, by alleging that the title has been waived thereby. *Clise v. Beaumont*, 1 De G. and S. 397.

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THE LORD CHIEF BARON AND THE LUNACY COMMISSIONERS.

As stated in the postscript to our last number, the Commissioners in Lunacy have deemed it expedient to address a letter to the Lord Chancellor, with reference to their duties and practice, under the 8 & 9 Vict. c. 100, in consequence of certain observations not altogether of an extra judicial character, which fell from the Lord Chief Baron, upon the trial of a case of *Nottidge v. Ripley*, which occupied the Court of Exchequer at Nisi Prius for three days at the Sittings after Trinity Term last, and attracted considerable attention from the singularity of the circumstances disclosed by the evidence of the witnesses. The Commissioners' letter was called for by an address from the House of Commons, a few days before the Sessions closed, returned pursuant to such address, and has thus become a public document.

Few of our readers will probably have forgotten, that "*Nottidge v. Ripley*," was an action brought by a maiden lady, of mature age and independent fortune, against her brother and brother-in-law, for forcibly taking her from a village in Somerset where she was residing, and confining her in a private lunatic asylum in the vicinity of the metropolis, for a period of about fifteen months. Miss Nottidge, it was admitted, had not exhibited any symptoms which rendered her dangerous to herself or others; but entertained very peculiar religious notions in common with two of her married sisters, and several other persons, who formed a species of religious community, and resided in a building on which its inmates bestowed the somewhat equivocal title of the "*Agapemone*," or "*Abode of Love*." The attention of the Commissioners in Lunacy was especially directed to the case of

Miss Nottidge, very soon after she was confined in the private asylum. She was seen and conversed with, by more than one of the Commissioners on several occasions, and a majority finally came to the conclusion that she might be safely discharged. There was no commission *de lunatico inquirendo* in Miss Nottidge's case, but she was detained for the period already referred to, under the authority of the preliminary order and certificates prescribed by the act 8 & 9 Vict. c. 100. The order was signed by one of the nearest relatives of the lady, and there were certificates from two medical practitioners of respectability who had examined the patient separately, and a third from the medical officer of the establishment in which she was confined, all of which concurred in stating, that in the judgment of the parties signing these documents, Miss Nottidge was of unsound mind, and a proper subject for confinement.

Under these circumstances, the Chief Baron was understood to have expressed an opinion, that as those who caused the plaintiff to be confined did not act under the authority of a Commission, finding her to be a lunatic, they could not be said to have had "the sanction of the law," and that generally, no person ought to be confined in a lunatic asylum "unless dangerous to himself or others." The Commissioners in Lunacy contend that great evils would result to society from the acceptance and adoption of the Chief Baron's opinion as a practical rule, and their letter to the Chancellor, which is signed by Lord Ashley, as chairman, and countersigned by the secretary, contains a temperate vindication of their own conduct; and of the principles which have governed them in the exercise of their functions, and an elaborate attempt to prove the unsoundness of the dicta which fell from the Chief Baron on the trial in question.

With reference to the supposed necessity of a Commission, in order to give the confinement of an alleged lunatic the sanction of the law, the Commissioners lay it down :

"That proceedings by Commission are, generally speaking, advisable only where the insanity is likely to be of a permanent character, and the property of the lunatic is of such a nature as to require them, and of an amount adequate to meet the expense, always considerable, and, when the Commission is contested, frequently very large.

"Wherever a reasonable hope of recovery exists, and the income of the lunatic can, in the mean time, be properly administered for his benefit without a Commission, the general practice amongst the friends and relatives of the insane is to avoid resorting to proceedings which shall entail unnecessary cost, which, by the disclosures they occasion, are most painful to the feelings of the family, and which, by the excitement they produce, are sometimes injurious to the patient himself.

"It is obvious that the finding of a jury is in no case essential, in order legally to justify the confinement of a person of unsound mind. In fact, out of 4,028 private patients, (many of them possessed of considerable property,) who were confined in asylums on the 1st January, 1842, only 245 had been found lunatic by inquiry."

These observations of the Commissioners, although conclusive as to the practice, leave the question as to the expediency of allowing any person to be confined in a lunatic asylum, without previous investigation by a responsible public tribunal, precisely as it stood before. The remarks of the Commissioners upon the legality and expediency of detaining in lunatic establishments, persons who, so far as their acts are concerned, may be considered harmless, are better deserving of attention, and more likely to influence the public mind. The word "lunatic," is defined in the act 8 & 9 Vict. c. 100, s. 114, to mean "every insane person, and every person being an idiot, or lunatic, or of unsound mind," and in this act, as well as in the County Lunatic Asylums' Act, (8 & 9 Vict. c. 126,) dangerous lunatics are referred to, as forming part *only* of the body of insane persons to be subjected to confinement and proper treatment. Upon this part of the question the letter of the Commissioners thus proceeds :—

"If, in practice, the class of insane persons placed in confinement were limited to such as had previously exhibited some dangerous tendency, the main purpose of the Legislature, in the statutes now in force, would be frustrated, and a most fearful hazard be incurred. For, inasmuch as the tendency to danger first shows itself more frequently in the latter than in the earlier stages of the disease, when alone such

disease is likely to be cured, a large proportion of patients of this class would be deprived of the benefit of proper curative treatment until after they had placed either themselves or other persons in peril, and had not improbably (owing to the lapse of time) become themselves incurable.

"Moreover, the difficulty of ascertaining whether one who is insane be dangerous or not is exceedingly great, and in some cases, can only be determined after minute observation for a considerable time.

"In respect to pauper lunatics, it has already been the subject of almost universal complaint, that the number of such lunatics has been multiplied, and the country burthened to a prodigious amount, because the poorer class of lunatics have been allowed to remain at large, or kept in workhouses, deprived of that medical treatment which a lunatic establishment properly managed is best calculated to afford, until their malady has become incurable.

"The misery to lunatics' families, and the great cost to the various parishes and counties consequent on this course, it would be difficult to exaggerate.

"In regard to private patients, if not placed for cure or care in some lunatic establishment, they must be kept at home under every disadvantage to themselves, and be the cause of great and unnecessary expense, and of inexpressible annoyance to their families. The first, and an essential proceeding with a view to cure, is, generally, to detach the patient from the scenes and associations in the midst of which his disorder has arisen. If he were to remain at home, this could not be effected.

"Again, the habit and general conduct of patients under the influence of mental disease are frequently so violent, and at times so offensive, that it would be to the last degree cruel and unjust to expose the other members of the family to them; more especially where there are children, whose minds might receive a shock, and perhaps be incurably injured, by continually witnessing the paroxysms or maniacal extravagances of a lunatic. Equally unjust would it be to suffer the infirmities of the patient himself to be exposed to the gaze of all the members of the household, and, in many cases, to the notice and comments of the neighbourhood and of strangers. There are cases of insanity, as your lordship is aware, in which the most distressing symptoms appear, in which the character of the individual for a time becomes altogether distorted; his habits filthy; his expressions and general conduct disgusting. There are also cases of females, suffering under a form of mental disorder well known to the medical profession, in which, from disease, not only the words, but the actions also of the patient become absolutely uncontrollable, where the original and real character is, for a time, altogether subverted, and all modest restraint and decency are abandoned. The want of moral control, indeed, is one of the most common symptoms and indications of insanity; and the actions and expressions of a

large number of patients, suffering, at certain periods, under maniacal excitement, are of such a nature, that it becomes an imperative duty to protect and shield them from observation as much as possible. The privacy indispensable in cases of this sort can only be properly afforded in houses adapted for the purpose of receiving lunatics, who, there at least, are secluded from the observation of all persons except those under whose care they are immediately placed, and are generally exempted from the mechanical restraint or coercion of the person which, if they were confined at their own homes, must frequently be inevitable."

The following statement, in the letter of the Commissioners, will go far to allay the jealous suspicion which a hasty consideration of the case of "*Nottidge v. Ripley*," might have excited, as to the possibility of a person *not* insane being compulsorily detained in a lunatic establishment, upon the ground that he entertained certain opinions on religious or political subjects, which a majority of the community might consider extravagant and unreasonable:—

"In the majority of cases which come under the cognizance of the Commissioners, they have little difficulty in satisfying themselves as to the state of mind of the patient; but cases of nicety and difficulty occasionally arise, exhibiting such peculiarities, and differing so decidedly in some respects from all others, that the Commissioners, in dealing with them, have been unable to lay down any general rule or principle for their guidance. *In no case have they decided that opinions, however wild or extravagant, which were common to any class or body of persons, either in reference to religious belief or otherwise, constituted or amounted to insanity.* And in no case have they decided that a patient was insane, because his symptoms resembled, in a greater or less degree, those of other patients whom they have previously known; but they have considered each individual case as depending upon its own special circumstances, and have formed their judgment accordingly."

If a patient be placed in an asylum without having been of unsound mind, or if a patient, (originally a fit subject for confinement,) be restored to a sound state of mind, it is distinctly admitted to be the bounden duty of the Commissioners to discharge him; but other circumstances constantly arise in which a duty of equal delicacy and responsibility is thrown upon the Commissioners, and in which much must necessarily be left to their discretion. The principles upon which that discretion is exercised in such cases, are thus stated in the letter before us:—

"Under peculiar circumstances, where, after sufficient observation, a patient, although of

weak or unsound mind, appears to be perfectly harmless, the Commissioners frequently promote his liberation, if he have a comfortable home, or any friends disposed to receive and protect him and his property from injury; but, where this is wanting, the Commissioners do not think themselves justified in removing the patient from the shelter of an asylum, and leaving him at large and unprotected. They consider it to be quite clear that they are not bound, as a general rule, to speculate upon the chance that a patient who, in their opinion, is still insane, will be perfectly harmless if at large, and therefore to liberate him accordingly.

"The person signing the order for a patient's confinement (generally a relative or friend) not unfrequently, indeed, takes upon himself the responsibility of liberating a patient whilst still under a delusion, and before recovery, and the Commissioners have no right, and never attempt to interfere. The consequence of the premature discharge of a lunatic patient, however, is frequently a relapse, and should as much as possible be avoided."

The above extracts sufficiently indicate the scope and objects, as well as the style and spirit, in which the Commissioners' letter is framed. The subject is of still greater importance, perhaps in a social than in a legal view.* We should have been better pleased if the discussion had not assumed the character of a commentary upon observations falling from a learned judge at Nisi Prius. A reply in such a shape is always inconvenient, were it only because the judge is precluded from entering the field of controversy, and justifying and maintaining the opinions to which he has given utterance from the Bench. On the other hand, it must be admitted, that the efficiency of a public board, constituted like that of the Commissioners in Lunacy, and invested with duties of so grave and delicate a nature, depends mainly upon its members being able and willing, upon every occasion, to enter into an explanation of their official conduct, and to prove themselves entitled to the public confidence.

* The number of persons admitted between the 1st January, 1846, and the 31st December, 1848, into the various lunatic asylums in England and Wales, excepting Bethlem Hospital, and the Naval and Military Lunatic Hospitals, which are not under the jurisdiction of the Commissioners in Lunacy, is thus stated in the last return of the Commissioners:—"Private asylums; males, 2,171, females, 2,466. Pauper asylums; males, 6,155, females, 6,344. Total of patients, 17,838. Discharged cured: private, males, 1,103; females, 1,032; pauper, males, 1,921; females, 2,281. Died: private, males, 530; females, 363; pauper, males, 2,146; females, 1,672.

NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

[The Statutes of this Session printed in the last and the present Volumes, are as follow:—

Buckingham Assizes, vol. 37, p. 408.

Inclosure of Commons, vol. 37, p. 408.

Appointment of Overseers of Poor, vol. 37, p. 448.

Law of Larceny Amendment, vol. 37, p. 471.

Annual Indemnity, vol. 37, p. 489.

Petty Sessions in Counties and Boroughs, p. 78, *ante*.

Maintenance of Poor out of Workhouses, p. 101, *ante*.

Costs of Distraining for Highway Rates, p. 127, *ante*.

Defective Powers of Leasing, p. 187.

Sheriff of Westmoreland, p. 220, *ante*.

Passengers' Regulation, p. 239.

Relief of Poor in Cities and Boroughs, p. 259.

Small Debts, p. 280.

Bankruptcy Law Consolidation Act, pp. 297, 317.]

**JOINT-STOCK COMPANIES WINDING-UP
AMENDMENT ACT, 1849.**

12 & 13 VICT. c. 108.

An Act to amend the Joint-Stock Companies Winding-up Act, 1848. [1st August, 1849.]

[The important clauses of this act are given fully and the substance of the others.]

1. *The 11 & 12 Vict. c. 45, to extend to all partnerships, associations, and companies consisting of not less than seven members. Proviso as to mining companies in Cornwall.*—Whereas it is expedient to amend as after mentioned the Joint-Stock Companies Winding-up Act, 1848, 11 & 12 Vict. c. 45: Be it enacted, That notwithstanding anything in the said act contained importing a more limited application thereof, the same shall apply to all partnerships, associations, and companies whereof the partners or associates are not less than seven in number, whether incorporated or unincorporated, and whether formed or subsisting before or after the passing of the said act or this act, other than and except railway companies incorporated by act of parliament, to which companies such act shall not apply: Provided always, that upon the hearing of any petition for the dissolution of any such partnership, association, or company, the Court shall, in considering the necessity or expediency of any such dissolution, or the terms or special directions subject to which it may think fit to allow such dissolution, have regard to any articles of partnership or other contract which shall be subsisting between the members of such partnership, association, or company: Provided nevertheless, that nothing herein contained shall affect the jurisdiction of the Court of Stannaries in Cornwall; and that nothing in this act nor in any act herein referred to contained shall extend or be construed to

extend to any partnership, association, or company formed for the working of mines on the principle commonly called the Cost Book Principle, within the said stannaries and jurisdiction of the said Court, unless the owner or owners of one-tenth in value of the shares in any such mine, as shall appear on the cost book, shall present a petition to the Lord Chancellor or to the Master of the Rolls for the dissolution and winding up, or for the winding up, of the affairs of such company, which petition, and the parties thereto, and all proceedings thereupon, shall be subject to the provisions of this act and the acts herein referred to; and that on such petition being so presented, and notice thereof being given to the Vice-Warden by the party petitioning, the Court of the said Vice-Warden, and the registrar and officers thereof, shall cease from entertaining and dealing with any cause touching such mine, except so far as may be allowed and directed by order of the Court of Chancery, in regard to any cause then or to be thereafter brought in the Court of the said Vice-Warden, or in regard to any proceeding to be taken in furtherance of the said petition and the purposes of this act and the acts herein referred to; and that the said Vice-Warden and Registrar, in taking such proceedings, shall have all the powers which any district Commissioner of the Court of Bankruptcy now has in any matter which by virtue of this act and the acts herein referred to may be brought before him.

2. *Petition for dissolution, &c., to be advertised in newspapers and in Gazette.*

3. *The petition for dissolution, &c., may be verified by affidavit.*

4. *Winding up under pending suit.*—That the provision in the said act contained for empowering her Majesty's High Court of Chancery in England and Ireland respectively, in any decree or order for the dissolution of a company or of any other association or partnership as therein mentioned, to be made in any suit then pending or thereafter to be instituted, and also, by any order to be made after a decree for the dissolution of a company, association, or partnership in any such suit, to order that the affairs of such company, association, or partnership should be wound up under the provisions of the said act, and that the costs of winding up the same should be paid and recovered according to the provisions of the said act, and for that purpose to give directions as therein mentioned, any decree or order so to be made to be deemed, if the said Court should so direct, an order absolute under the said act, shall extend in all respects to any decree or order of the Court for or relating to the winding up of the affairs of any such company, association, or partnership as therein mentioned made in any suit now pending or hereafter to be instituted, and also to any order made after a decree for or relating to the winding up of the affairs of a company, association, or partnership in any such suit.

5. *Survivor.*—That it shall be lawful for the master for the time being acting in the winding

up of any company under the said act in respect of which an official manager has been or shall be appointed, if he shall think fit so to do, from time to time to allow any surety of such official manager to withdraw from his suretyship, or to become bound in a smaller sum, from time to time, upon his procuring another surety or sureties to become bound in a competent amount; and also to allow any surety from time to time to become bound in a larger sum, and to direct any new recognizances to be entered into accordingly; and also that it shall be lawful for the Master, in any case arising under the present provision, and also upon the death, bankruptcy, or insolvency of any surety, and the appointment of any new surety in his place, to order any surety's recognizance to be vacated: Provided always, that nothing herein contained shall authorize the Master at any time to allow the total amount of the recognizances of all the sureties of any official manager for the time being to fall short of the sum in which such official manager is bound.

6. *Remuneration to official manager.*—That, notwithstanding the provision of the said act contained for empowering the Court to allow, increase, or diminish from time to time the salary or remuneration of the official manager, it shall be lawful for the Master to exercise the said powers and discretions so given to the Court, and that whether as respects any official manager already appointed or hereafter to be appointed: Provided always, that such salary or remuneration shall not, if it be by per-centage, unless the Court otherwise direct, exceed (in addition to any allowances or salaries to clerks or officers employed by such official manager in or about the winding up of the company, such allowance or salary to be also fixed or approved by the Master) the rates or sums herein-after mentioned; that is to say,

In respect of all monies arising from the estate of such company received by the official managers, and paid or divided among the creditors or contributories of the same under the provisions of the said act, which shall not exceed 100,000*l.*, 5*l.* per cent.:

In respect of all further monies which shall exceed 100,000*l.* but shall not exceed 200,000*l.*, 4*l.* per cent.

And in respect of all further monies so divided which shall exceed 200,000*l.*, 3*l.* per cent.

7. *Provisional manager.*—That the provision herein contained with respect to the remuneration of an official manager, and the provisions in the said act contained with respect to passing the accounts of the official manager, and the inspection of his books by the contributories, and the evidence of his books, accounts, and documents; and all other the powers and duties of the official manager, shall apply in all respects to the remuneration of any interim or provisional manager to be appointed as in the said act mentioned, and to the passing of his accounts, and the inspection of his books, and the evidence of his books, accounts, and docu-

ments; and the powers and duties of the interim or provisional manager.

8. *Official manager may endorse bills and notes, and raise money on security of assets.*

9. *Contributories.*—That the word "contributory" as used in the said act or in this act with respect to the persons who are to attend the proceedings before the Master, and to the representation of classes of contributories, and to the representation of contributories being minors or lunatics, and to the appointment by the Master of next friends, guardians, or representatives, and with respect to determining and resolving questions of law or of fact, or matters in contest arising in or about the winding up of the affairs of any company, shall be taken to include alleged contributories.

10. *Official manager's authority.*—That if more than one official manager of any company shall have been or shall be appointed under the said act, any one of the official managers so to be appointed shall have power to bind and conclude his co-managers to the same extent and in the same manner in all respects as any one assignee of the estate and effects of a bankrupt has power to bind and conclude his co-assignees.

11. *Remuneration of official manager's solicitor by per-centage or otherwise.*—That it shall be lawful for the Master to make or allow any arrangement which he may think fit from time to time with respect to the remuneration of any attorney or solicitor to be appointed by the official manager, and that such remuneration may be either by way of per-centage or otherwise; provided that such remuneration, if it be by per-centage, shall not, unless the Master shall otherwise specially direct, exceed (in addition to actual payments) the rates or sums hereby authorized to be allowed to the official manager for his salary or remuneration:

12. *Costs.*—That the costs of all proceedings which shall take place in and about the winding up, as to which the Court shall have made no order, shall be in the discretion of the Master; and that it shall be lawful for the Master to award a single sum or fee for any costs awarded by him, or otherwise to settle the principle and the scale of fees upon or according to which such costs shall be ascertained and settled.^a

13. *Official manager's authority.*—That all acts and things by the said act or by this act required or authorized to be done by the official manager, with the leave or approbation or under the direction of the Master, shall, so far as respects the safety and protection of debtors and other persons not being contributories of the company, and not affected with notice of any fraud, be valid and conclusive, notwithstanding such leave or approbation have not been obtained or such direction have not been given.

^a This mode of remunerating a solicitor by a per-centage is new in this country, though long adopted in Scotland.

^b This also introduces a new principle in professional emoluments.

14. Bankrupt or insolvent contributories to be represented by their assignees.

15. Master may adjourn proceedings generally, or continue without adjournment.

16. Master may dispense with advertisements.

17. Master may review his proceedings.

18. List of contributories, &c., as prepared by official manager, to be evidence.

19. *Master may require evidence.*—That it shall be lawful for the Master under the powers of the said act, to require any evidence to be given or discovery to be made before him respecting the estate, dealings, or affairs of any contributory or deceased contributory of the company, or respecting any other matter in which the company may be interested, and which might have been compelled or obtained in any suit in equity at the instance or on the behalf of the company; and that any person who shall be summoned before the Master for the purpose of giving any such evidence shall be deemed to be within the provision and penalties of the said act with respect to witnesses.

20. *District Commissioners in Bankruptcy and County Court Judges, &c. may receive evidence.*—That the district Commissioners of the Court of Bankruptcy, and the Judges of the County Courts in England who sit at places more than 20 miles from the General Post-office, and the Commissioners of Bankrupt and the assistant barristers and recorders in Ireland, and in all cases relating to mines within the jurisdiction of the Stannaries Court in Cornwall the Vice-Warden or the Registrar of the said Court, shall be and they are hereby appointed Commissioners for the purpose of taking and receiving evidence under the said act and this act; and it shall be lawful for the Master, by any order under his hand, to refer the whole or any part of the examination of any witness under the said acts to any such Commissioner, although such Commissioner be out of the jurisdiction of the Court by which the order absolute was made; and every such Commissioner shall, in addition to any power of summoning and examining witnesses, and requiring the production or delivery of documents, and certifying or punishing defaults by witnesses, which he might lawfully exercise as a district Commissioner of the Court of Bankruptcy, Judge of a County Court, Commissioner of Bankruptcy, assistant Barrister, or Recorder, or as the Vice-Warden or the Registrar of the Stannaries Court, have and exercise in the matter so referred to him, all the same powers of summoning and examining witnesses, and requiring the production or delivery of documents, and certifying or punishing defaults by witnesses, and allowing costs and charges to witnesses, as are given by the said act or this act to any Master charged with the winding up of any company under the same: and the examinations so to be taken shall be returned to the Master as he shall direct.

21. Master may order the examination of persons in Scotland, whether contributories to

the company or not, as to the estate, dealings, &c. of or with such company.

22. Witnesses summoned before Commissioners to be within provisions, &c. of act, and costs to be costs in the winding up.

23. Summonses from England to be good in Ireland, and *vice versa*.

24. Affidavits, &c. may be sworn in Ireland, Scotland, or the colonies, before any competent Court or person.

25. That, notwithstanding anything in the said act contained, no deed of grant by the official manager shall require to be approved or certified by the Master, unless the parties differ about the same.

26. That in notices of inclusion in or exclusion from list of contributories, it be sufficient to state for what interest a party is included or excluded.

27. Powers of inclusion or exclusion may be exercised so long as any shares remain unadjudicated upon.

28. *Calls on contributories.*—That so much of the said recited act as is contained in the section thereof numbered 84 in the copy of the said act printed by the Queen's printer shall be and the same is hereby repealed; and in lieu thereof, that, when the Master shall think proper to raise any money by means of a call, he shall make such call from time to time upon the contributories of the company, or any of them, appearing for the time being on the list of contributories, although it may then be under consideration, or uncertain, whether other persons ought or ought not to be included in the list; and in making any such call it shall be lawful for the Master to fix such an amount per share for the same as shall in his judgment be likely to supply and bring in the whole sum for the time being intended to be raised, after taking into consideration the probability that some of the contributories upon whom the said call shall be made should partly or wholly fail to pay their respective proportions of the same.

29. Official manager may compound claims, &c. of unascertained amount.

30. Official manager may prove against estate of bankrupt or insolvent contributories, &c., and receive dividends. If creditors of the company also prove, the dividends payable to the official manager are to go amongst those creditors. If any such creditor be the petitioning creditor under the fiat, the dividends received by him are to be set against dividends payable to the official manager.

31. *Trial of issues.*—That it shall be lawful for the Master, in directing any issue or question of fact to be decided by a jury under the power of the said act, to determine whether such issue or question shall be decided by a common or by a special jury; and that it shall also be lawful for the Master to direct a new trial of any such issue or question; and also that it shall be lawful for the Master to require any contributories or alleged contributories to interplead before him in any question of liability or other matter in difference between such contributories or alleged contributories in

which the company is interested, or which is necessary to be determined in order to the complete winding up thereof, and thereupon to decide the same.

32. Master may make orders in the presence of the parties, though varying from the notice.

33. Re-hearings not to be moved for after three weeks.

34. Order need not be reversed on appeal for want of form only.

35. *Per-centage in lieu of fees to Suitors' Fee Fund.*—That in lieu of all fees to be received or charged in aid of the Suitors' Fee Fund in respect of any proceedings, orders, or matters under the said act or this act, the interim or provisional manager or the official manager of any company the affairs of which shall be wound up under the said act shall pay into the Bank of England, with the privy of the Accountant-General of her Majesty's High Court of Chancery in England or Ireland respectively, to be there placed to the credit of the Suitors' Fee Fund Account, such amount by way of per-centage as shall be certified by the Master upon the monies received by the official manager, and paid or divided amongst the creditors or the contributories of such company in winding up the affairs thereof, not exceeding the sums following; that is to say,

Upon the first monies paid and divided, not exceeding 50,000*l.*, the sum of 10*s.* per 100*l.*

Upon all further monies above 50,000*l.* and not exceeding 100,000*l.*, so paid and divided, the sum of 5*s.* per 100*l.*

Upon all further monies above 100,000*l.* and not exceeding 200,000*l.*, so paid and divided, the sum of 3*s.* 4*d.* per 100*l.*

Upon all further monies exceeding 200,000*l.*, so paid and divided, the sum of 1*s.* 3*d.* per 100*l.*

Provided always, that it shall be lawful for the Lord Chancellor, of Great Britain or the Lord Chancellor of Ireland, by such rules or orders as herein-after mentioned, to alter and vary from time to time the rates herein specified.

36. *Omission of christian names in notices, and letters sent by post.*—That no service under the said act shall be deemed invalid by reason of the christian name or any of the christian names of the person upon whom service is sought to be made having been omitted, or designated by initial letters, in the list of contributories, or in the summons, notice, order, or other document wherein the name of such contributory is contained, if the Court or Master be satisfied that such service has been in other respects sufficient; and that any summons, notice, order, or other document sent by post shall be pre-paid, except so far as the rules of the Post-office shall not allow of pre-payment; and that in proving any such service by post it shall not be necessary to show that the document was not returned.

37. *Rules and orders.*—That the powers by the said act given to the Lord Chancellor of Great Britain and the Lord Chancellor of Ireland respectively, with such advice and consent

as therein mentioned; of making, varying, and discharging rules and orders for the objects therein mentioned, shall extend to authorize and empower the Lord Chancellors respectively, with the like advice and consent as in the said act mentioned, to make all such rules and orders as from time to time shall seem necessary or expedient for carrying into effect the purposes of the said act or of this act, by her Majesty's High Courts of Chancery in England and Ireland respectively, and from time to time to alter, vary, and discharge any such rules or orders.

38. Act to be part of Joint-Stock Companies' Winding-up Act, 1848.

39. That in citing this act in other acts of parliament, and in legal instruments and in legal proceedings, it shall be sufficient to use the expression "The Joint-Stock Companies' Winding-up Amendment Act, 1849."

40. Act not to apply to Scotland.

SCHEDULE (A.)

Form of advertisement in newspapers of petition for dissolution and winding up, or winding up.

SCHEDULE (B.)

Form of affidavit verifying petition for dissolution and winding up, or winding up.

THE PRACTICE OF RETAINERS.

HAVING in our last number (p. 329) quoted all that appears in the Reports relating to Questions of Retainers that have come before the Courts, it may be useful to add such opinions and dissertations as we find in the writings of eminent men. Where the points appear to have been settled by common consent, the information thus collected will be valuable, and where doubts exist, the statement of them will show the importance and necessity of the measures recently adopted by the Incorporated Law Society to bring about an adjustment of those points.

For the present we select the following observations from the notes of Mr. Basil Montagu* :—

"From the constitution of our Courts, it has been deemed expedient, for the purpose of eliciting the truth, both of law and of fact, that the judge should hear the most powerful opposite statements of experienced men, who are more able to do justice in a public assembly to the cases than the suitors themselves. The wisdom of this expedient may be easily illustrated. If a judge is called upon to decide on any doubtful question, in chemistry for instance, would it not be desirable that he should hear the conflicting statements of two eminent chemists? or, in a doubtful question of insa-

* Montagu's Bankruptcy Cases, p. 69.

nity, to hear the opposite sentiments of two eminent physicians? or, in a question of fracture of a limb, the opposite sentiments of two eminent surgeons? Assuming that the truth will be best discovered by the conflicting reasons of men disinterested in the event of the suit, there are certain rules by which, for the attainment of this object, the practice of the bar is regulated; and among the most important of these rules, it is established,

"First. That a barrister must not exercise any discretion as to the suitor for whom he pleads in the Court in which he practises.

"Secondly. A barrister is bound to act for the party for whom he is retained, as long as his services are required, and no longer.

"Thirdly. The disputes between different suitors, as to the right of retainer, must be decided, not by any public tribunal, but by the barristers themselves.

"Each of these positions seems to be of sufficient importance to require a separate investigation.

"1. A barrister ought not to exercise any discretion as to the suitor for whom he pleads in the Court in which he practises.

"If a barrister was permitted to exercise any discretion as to the client for whom he will plead, the course of justice would be interrupted by prejudice to the suitor and the exclusion of integrity from the profession. The suitor would be prejudiced in proportion to the respectability of the advocate, and the weight of character of counsel would be evidence in the cause. Integrity would be excluded from the profession, as the counsel would necessarily be associated with the cause of his client, with the slanderer, the adulterer, the murderer, or the traitor: whom it may be his duty to defend. To a barrister, therefore, it is a matter of indifference whether he appears for the most unfortunate or the most prosperous member of the community, for the poorest bankrupt, or noblest peer of the realm. He lends his exertions to all, himself to none. The result of the cause to him is a matter of indifference. It is for the Court to decide. It is for him to argue. He is, however, he may be represented by those who understand not his true situation, merely an officer assisting in the administration of justice, and acting under the impression that truth is best discovered by powerful statements on both sides of the question.

"2. A barrister is bound to act for the party for whom he is retained, as long as his services are required, and no longer.

"If a client were at liberty to avail himself of the assistance of a barrister during part of the cause, and then to reject him, without liberty to the opposite party to insist upon his services, the poor would be defenceless. This, which is not an imaginary but a real evil, may be explained by two cases which have happened within our time. In the case of Mr. Shelley, argued in this Court a few years ago, all the King's Counsel were retained against Mr. Shelley. In a cause in which some years since the orphan children of the late Lord Lonsdale's

agent were the plaintiffs in a suit instituted against that nobleman to obtain payment of a debt, which was all the property they had in the world, the defendant retained all the counsel at Carlisle. The judge refused to try the cause. The children were, during the life of Lord Lonsdale, deprived of their property, and exposed to great inconvenience. The whole, with the interest and all the costs, was voluntarily restored to them by his noble successor, the present lord. Will it be contended that opulence can possess this power merely by sending one brief to a counsel at the commencement of a suit, and then rejecting him?

3. The dispute as to different retainers must be decided, not by any public tribunal, but by the barristers themselves.

"First, for the necessity of expeditious decision; and, secondly, because the bar is the most expeditious tribunal; and, thirdly, because the Chancellor has not jurisdiction.

"From the very nature and frequency of these disputes, it is absolutely necessary that more expedition should be used in these decisions than can be expected from any public tribunal. When a cause is standing in the paper for trial, is the suitor to be deprived of his counsel until an answer is put in to an injunction filed by his opulent opponent? Is the business of the circuit to stand still, or are causes to proceed, or to be delayed, at the option of a suitor who may file his bill in equity? The delay unavoidably attendant upon the possibility of procuring decisions in these cases, is in itself satisfactory proof of the wisdom of the practice which from time immemorial has existed. But even if the Court of Chancery were capable of proceeding with the requisite dispatch which the urgency of these cases require, the power of this Court would not be as efficacious as the decision of the bar upon the conduct of one of its own members. Of the power of this tribunal, no man, who reflects upon the intellectual and high feeling with which the bar abounds, can entertain any doubt. Dr. Paley, when speaking of the power of the bar says, 'The opinion of the bar, concerning what passes will be impartial, and will commonly guide that of the public. The most corrupt judge will fear to indulge his dishonest wishes in the presence of such an assembly; he must encounter what few can support, — the censures of his equals and companions, together with the indignation and reproaches of his country.' If such is the power of the bar over the bench, who can doubt its efficacy over its own members? For these reasons the bar is the proper tribunal to decide; and a barrister to whom the case is referred, is the proper judge.

Such being the doctrine with respect to retainers, Mr. Montagu then proceeds to explain what does and what does not constitute a retainer:—

"The true meaning of a retainer cannot be mistaken. It is an engagement for the assistance of a barrister, either generally in all cases in which the client may be engaged, or in some particular

cause to which the retainer is speedily limited. It is a declaration by the client that he at all events intends to send a brief to the counsel whom he has retained. It is an absolute not a conditional engagement. If, by accident, the client omit to send a brief, and a brief is tendered by the opposite party, courtesy requires that notice should be sent to the retaining client; but if the retaining client intentionally omit to send a brief, such notice is not only not requisite, but is improper. The engagement is not conditional.

"Such being the nature of a retainer, it remains to explain some erroneous opinions which exist respecting acts which have been supposed to amount to retainers. These are:—

"1. Advising.

"2. Drawing pleadings.

"3. Retainer without an intention to send a brief, unless the opposite party sends a brief.

"4. Retainer with the intention to send a brief, not during the whole progress of the suit, but only occasionally.

"Each of these acts is at different times supposed to amount to a retainer; but they are all improper; the two first generally originating in mistake; the two last in a practice which cannot be sanctioned. A moment's examination of these acts will show its true nature.

"1. *Advising*.—A client confers with a barrister whose judgment he respects; he states his case, the barrister communicates his opinion, and the conference is terminated. This does not amount to a retainer. There is no obligation upon the client to employ, as an advocate, a barrister whom he values solely as a chamber counsel. Nor is the advocate restrained from acting for the opposite party, who may entertain different sentiments of his attainments."

"2. *Drawing pleadings*.—A party states his case. The pleading is drawn; the barrister has discharged his duty and his engagement is terminated. This does not amount to a retainer. There is no obligation of the client to employ, as an advocate, a barrister whom he values only as a draftsman; nor is the advocate restrained from acting for the opposite party, who may entertain different sentiments of the barrister's attainments."

"In each of these cases, the intercourse between the client and the barrister has been sometimes imagined to amount to a retainer, from the confidential knowledge which the advocate possesses of the case against which he is to plead: and there is some appearance of reason in this supposition. It is, however, nothing but appearance; and even if it really existed, the perplexity is occasioned, not by the fault of the barrister, but of the client. It is nothing but appearance, for there is no probability that the barrister will reveal any communication which has been made to him in confidence. He has no interest in the event of the suit. He is merely the organ by which the

suitor states his case; and he acts only from his instructions. He has no knowledge but what his brief conveys. If the client quit his advocate, which he is at liberty to do, he must trust, and he may safely trust to the honour and integrity in which he at first confided. There is no temptation to violate the confidence reposed, and even if the temptation existed, it is checked by the most powerful of all checks, the consciousness of the immediate disapprobation of the whole profession. But even if the danger do exist, it must be remembered, that the perplexity is occasioned, not by the barrister, but by the client, who was at liberty to command the professional assistance of the advocate; and not having done so, either from intention or from accident, he must take the consequences of his own conduct, or the bar must be lowered to the necessity of asking for fees for retainers, or for briefs. It may be said in this case as was said by the Lord Chancellor in the case of *Goodhart v. Lowe*. 2 Jacob, 352, 'It is too much to expect the Court to take care of the property of persons who will not take care of it themselves.'

"The next species of improper retainer is,

"3. *Retainer without intention to send a brief*, unless the opposite party sends a brief.—'Retainers to your enemies, and briefs to your friends,' Sir Samuel Romilly used to say, was a disgraceful proceeding, of which he was aware, and which ought to be resisted.' There is not in this case any courtesy which requires notice to be given that a brief is sent by the opposite party; the only difficulty is of discovering the fact of the intention with which the retainer is delivered.

"4. *Retainer with the intention to send a brief*, not during the whole progress of the suit, but only occasionally. These intermittent retainers are, of course, improper.

INCORPORATED LAW SOCIETY.

ANNUAL REPORT OF THE COUNCIL.

At the General Meeting, held on the 13th June, the Council of the Society reported the result of their labours during the past year, in reference as well to the measures adopted on behalf of the profession generally, as of the affairs of the Society in particular, and the interests of its members. We shall, for the present, select those parts of the Report which relate to the several *Bills in the late Session of Parliament relating to the Law*. The Council thus briefly describe this branch of their duties:—

"The alterations from time to time proposed in the law, and bearing importantly on the profession, have engaged a large share of the attention of the Council since the last Annual Meeting.

"*General Register of Deeds*.—In proceeding to notice those measures, they propose, first, to

¹ These opinions are in opposition to those of Lord Eldon, Sir Samuel Romilly, and Lord Langdale, quoted at p. 329, *ante*.

select such as relate to the *Law of Property*, and the forms and practice of *Conveyancing*. Under this head they find the bill introduced by Mr. Drummond, called "The Transfer of Real Property Bill;" but which, in truth, is principally designed to register title deeds at the option of owners, and to give persons who have been in possession of real property for thirty years, an absolute title against every possible claim, provided an advertisement be inserted in the *London Gazette*, and no cause be shown against the registration. Moreover the bill proposes to alter the existing mode of conveying real property by substituting a short entry on the registry, and thereby to effect all that can now be done by a formal deed, or other instrument of conveyance.

"The bill has been referred to a Select Committee of the House of Commons; and as it appears that no further progress in the measure will be made, until after the Real Property Commissioners shall have presented their report, the Council have not deemed it advisable to bring forward their detailed objections to the project at present.

"*Taxation of Charges for Deeds, &c.*—The members are aware that Lord Brougham has introduced a Bill to extend the provisions of the Act "to facilitate the Conveyance of Real Property," whereby it is proposed to enact that in taxing any bill of costs for preparing or executing any deed, will, or other instrument in writing, the taxing officer shall be required, in estimating the proper sum to be charged for such transaction, to consider, *not the length* of such deed or other instrument, but *only* the skill and labour employed and the responsibility incurred in the preparation thereof.

"Though this bill has passed the House of Lords, no member of the House of Commons has taken charge of it. The Council are prepared with a petition, under the seal of the Society, to be presented at the next step which may be made; and they have also in readiness printed reasons against the bill, to be circulated as soon as may be deemed expedient: but they think it very likely it will not be proceeded with.

"The other Bills in this branch of the Law, to which attention has been directed, are those relating to the Transfer of Shares in Joint-Stock Companies;—Conveyances by Trustees and Mortgagees, by the operation of an Order of Court instead of a Deed;—the Assignment of Life Policies of Insurance;—the Partition of Joint Chattels;—Defective Powers in Leasing;—Irish Encumbered Estates;—and Copyhold Commutation: all of which bills the Council have examined with reference to their effect upon the practice of the law and the profession.

"*Charity Trusts.*—The Charitable Trusts Bill has also received the attentive consideration of the Council both in the last and the present Session of Parliament, and various suggestions have been made for its amendment.

"*Consolidation of Bankrupt Law.*—The Council, assisted by their Committee, have

bestowed much attention on the Bill for consolidating and amending the Law of Bankruptcy. They deemed it of great importance and extent, comprehending, as first printed, four separate and distinct objects:—1st. The construction of a new Court of Appeal, and many material alterations in the present mode of procedure in the Courts of Bankruptcy. 2nd. An entire code of Bankrupt Law, affecting the rights and interests of creditors, repealing all the existing statutes, re-enacting a large part of them, but with many important alterations and additions, and the restoration of several enactments contained in repealed statutes. 3rd. New arrangements between debtors and creditors not hitherto dealt with by the Court of Bankruptcy. And 4th. The distribution of the estates of deceased debtors in the Court of Bankruptcy, instead of the Court of Chancery. A petition on behalf of the Society was presented by the Lord Chancellor, who had previously received a deputation from the Council; and, on frequent communications with Lord Brougham, many of the alterations proposed by the Society and the Provincial Law Societies in great commercial towns were adopted, and the bill has been several times reprinted. In its present state it is considerably improved. It is still open to further improvement, and will be watched in its progress through the House of Commons; and any alterations that may be made will be under the continued consideration of a Special Committee of the Society.

"*Reduction of fees in Chancery.*—The amount and number of the fees paid at the several offices of the Court of Chancery have long engaged the attention of the Council, and three of their members were examined before the Select Committee of the House of Commons on the recent inquiry into the fees of the Courts of Law and Equity. The Council have been recently favoured with a statement from one of the Masters in Chancery, relating to the contemplated measures for abolishing a large class of those fees. The Council have not thought it necessary to enter into any details at present on the subject, but merely to call the attention of the profession to the measure thus contemplated, and to state their opinion that it is one of great importance, and likely to confer benefit both on the suitor and the solicitor.

"*Chancery offices.*—A Bill for the regulation of the Offices in Chancery was introduced last Session, but has not been revived in the present. The Council were prepared with several amendments in maintenance of the rights of solicitors, which they will not fail in bringing forward whenever the bill is again presented. A vacancy in the office of Chief Clerk to one of the Masters in Chancery being about to be filled up, by the appointment of a person not an attorney or solicitor, but qualified only from having served as a junior clerk in the office, the Council deputed some of their body to wait on the Master, and suggest that the appointment should not be made pending

the consideration of the question in Parliament on the Bill relating to the Chancery Offices; but they regret to say that the remonstrance was not attended with success, on the ground of the supposed peculiar circumstances of the case.

"Law of Evidence.—A bill has been introduced by Lord Brougham to amend the Law of Evidence by authorizing the examination of the parties to any action or suit, and their husbands or wives, except in criminal proceedings, and cases of wills, adultery, and seduction. It also proposes to render the evidence of one witness sufficient where now two are required, except in cases of affiliation. The books of traders, liable to the Bankrupt Laws, are also to be made evidence if they appear to the Court to have been kept with a reasonable degree of regularity. As the proposed alteration will deeply affect the administration of justice, render it more difficult and uncertain, and largely encourage the offence of perjury, the Council in case of the further progress of the bill, will feel called upon to represent in the proper quarter the dangerous nature of the alteration.

"Law of Elections.—The Council have also given attention to the Lord Chancellor's bill for preventing corrupt practices at elections, but the measure has not been proceeded with.

"Public Roads.—A bill recently before the House of Commons for the consolidation and amendment of the Law relating to Public Roads, and which was negatived in that House, has been revived in the House of Lords. One of the main objects of this measure is to place all the Turnpike Road Trusts under a central management, and to consolidate many of the trusts under one board, to whom clerks are to be appointed. If the Bill proceed, the Council will urge the insertion of a clause confining such appointments to duly qualified attorneys and solicitors.

"In addition to the bills already particularly mentioned, there are others which have received a due share of attention, viz.: the exclusion from Parliament of Insolvent Members; the Sequestrators' Remedy Bill; Affirmations in Lieu of Oaths; the Administration of Justice in the Metropolitan Districts; and Procedure at the Quarter Sessions."

Regarding The Annual Certificate Duty, the Report contains the following statement:—

"Soon after the last Annual Meeting the Council received a communication from Lord R. Grosvenor, who had kindly undertaken to bring forward the bill for the Repeal of the Attorneys' Certificate Duty, stating the substance of his Lordship's communication with the Chancellor of the Exchequer; and Lord Robert subsequently gave notice of a motion for leave to bring in a bill, which stood in the orders of the day on several occasions; but the pressure of other business of great public magnitude prevented the discussion, and ultimately the motion was deferred till this session.

"It was determined by the Council very early in the present year again to petition the House of Commons for the Repeal of the Duty, and a deputation was appointed to attend one of the members for the Metropolitan County. A statement was printed in support of the Repeal, copies of which were sent to all the Provincial Law Societies; and, at the suggestion of the Council, similar petitions to that of the Society were prepared from the members of the Law Societies in the country, and from other solicitors.

"Lord R. Grosvenor was unfortunately absent from England until after Easter; but, considering the strong feeling which his lordship had expressed of the justice of the claim, and the great pains taken by his lordship to collect information in support of his opinion, the Council felt justified in waiting his return. His lordship in a few days after his arrival very obligingly entered into the views of the society, and arranged to fix as early a day as the state of public business would permit; and Tuesday the 19th June has been appointed for the purpose. Arrangements have been made to support the measure by all the means in the power of the society, and by petitions from members of the profession in different parts of the country.

"The Council would most earnestly impress on the members of the society the importance of using their individual influence with members of both Houses of Parliament in support of the measure."

It was expected that a bill would have been introduced relating to the *Stamp Laws*, and on this important subject the Council observe that—

"The state of the Stamp Laws has also called for the attention of the Council, considering, as they do, that they are not only doubtful in many respects, but unequal and unjust in their operation.

"They recently took occasion to tender their services to the Lords of the Treasury, with a view to the revision of the scale of duty, which might be framed upon more equitable principles; and, whilst the public might be in many particulars relieved from unequal burthens, the revenue might be fully maintained; and should any new legislative measure be brought forward they will collect the opinion of the profession on such alterations as may be expedient.

"It may be satisfactory to the profession to be informed that the Council are assured by authority that the proposed removal of the Stamp Office from Somerset House will not be carried into operation."

We shall take an early opportunity of proceeding with the other parts of the Report.

PROFESSIONAL TAXES AND REMUNERATION.

In an article in the last number of the *Law Review*, to which we have already had occasion to refer, on "Professional Remuneration," we find it recommended, that the attorneys should not pursue their object of repealing the Annual Certificate Duty, but endeavour to secure its application to the general improvement of the profession. "Instead of asking for the abolition of the Certificate Money, the attorneys should demand," says the *Reviewer*, "that it be disbursed so as to give him a fair return; and if it be not levied on all classes of the profession alike, that the exempted should be made to bear the burden to the same good end." And the writer thus proceeds:

"The ignorant impatience of taxation has never been shown so markedly as in the claim for the abolition of this tax. The claim should not be to abolish the tax, but to apply it to the benefit of the profession and of the public whom it serves.

"It is not merely a Chancellor of the Exchequer's notion, but that of every prudent man, not readily and without the weightiest cause to part with a capital or fund once created, unless it be impossible to apply it productively.

"In the present case the fund admits of being applied to purposes of the greatest importance and productiveness.

"The profession is cursed with a most costly and inefficient body of law, which the life of man cannot enable him to master, even with the best energies; with a body of law records in the shape of reports equally impracticable; with a law literature, voluminous, inaccurate, error-creating and error-perpetuating; and the law is so inextricable a wilderness, that the profession, who should be men of business, only more highly-informed and highly skilled, because, to the ordinary practice of law they add a knowledge of the laws by which men are to be governed, and of the consequences of disregarding them, must needs be deficient in one-half of the requirements of their calling.

"Now, if the capital levied upon the profession were applied, by means of the services of lawyers themselves, on a systematised plan, in consolidating the law, in the production of well-digested reports, and in the publication of complete text writings, the profession at large who are engaged in active agency would find their work much facilitated, and a legitimate provision would be made for a class of service which is very ill required in all professions—a service not improperly made a charge on the rest of the profession, since, by its means, they are enabled to realise their gains.

"We earnestly implore the profession to consider well before they abolish this tax; but rather seek to make it the grand resource by

which they shall regenerate their profession for the common weal.

"It would be among the advantages of a minister of justice, that the judicial budget and its application would become a subject of distinct consideration in parliament and elsewhere.

"The tax in question produces a large annual revenue; let the whole profession holding official employments of a legal nature be taxed one per cent. for the same purpose, and a fund would be raised adequate to the most extravagant projects of law reform, and, by judicious organisation, the reign of Victoria might be distinguished as that of Justinian was by a reduction of the law into forms—call them codes, consolidated statutes, text books, or what we will—which shall be more manageable; and leave to the poor practitioner time for the more essential requirements of business, and the means of vindicating himself from the charge of costly and useless impracticableness."

There is no doubt that the large annual sum of 90,000*l.* a year, raised by the Certificate Tax, if judiciously applied, might, indeed, give some useful "return," instead of an unmitigated loss. For instance, part of it might be applied, as suggested in the *Law Review*, for the improvement of the law itself; part for affording better means of legal education, and the rest in providing relief for indigent members and their families. But it would be scarcely just that a tax levied from one branch, should bear the burden of improvements for the good of the whole. Those who are at present "exempted, should also be made to bear the burden."

Let it be recollected, that exclusive of the Annual Certificate Duty, there is the stamp duty of 12*0l.* on the articles of clerkship, the 25*l.* admission, and other fees, the amount of which exceeds the sum paid by a barrister on entering his Inn of Court, 100*l.* of which is refunded on his call to the bar. The toll upon admission to practise as an attorney is high enough, as a property qualification, without resorting to an annual impost of three or four per cent. on the average of his emoluments. If, however, a poll-tax on professional men be justifiable or necessary, then let all professions be taxed, and as many shillings a year as the attorneys pay pounds, will be sufficient from each individual. A small annual payment for registration would, indeed, be of public advantage, in order that the name and residence of every practitioner might be correctly known:

The cost of scientific digests of the various branches of the law, the preparation of future statutes, and, of early, concise, and

accurate reports of the decisions of the judges, should be borne by the State, and they should be published like Parliamentary Papers at the least possible price. The financial budget should comprise a sufficient provision for the due administration of justice and the improvement of the law, without taxing its professors. With respect to the expense of legal education, it should also be recollected, that the Inns of Court receive a large annual income in trust for the students of the law of all branches; and though the benchers for the supposed welfare of the bar have laid down rules which exclude attorneys from the dining halls, there is no ground in reason, justice, or policy, for excluding them from their libraries and lecture rooms.

CERTIFICATE DUTY.

PROPOSED SUBSTITUTION,

To the Editor of the Legal Observer.

SIR,—Wishing that a substitute could be pointed out to the Chancellor of the Exchequer for the iniquitous Certificate Tax, I trust your correspondents will turn their attention to the subject.

Doubtless, many cases occur in which professional men would prefer delivering their bills with the certificate of a public officer like the Taxing Master, "that the charges are usual and reasonable." Might not such an office be established, and a per centage paid on such bills whereby a considerable fund would be raised?

Of course such a system can only be adopted voluntarily; there would be nothing binding on either party as to liability or otherwise, but the satisfaction to the solicitor would at least be commensurate with the trouble and expense.

I am aware that the treasurers and solicitors

of some counties, and of other public bodies in like manner, send their bills to the Crown Office and other authorities for examination and certificate; I submit that if the principle were carried out, it would operate advantageously to the profession, and be no little comfort to them in a considerable number of cases.

ONE, &c.

NOTES ON THE CIRCUIT.

COMPULSORY REFERENCES.

At the assizes at Bristol, it appears that in consequence of the prevalence of the cholera in that city, the causes entered for trial were rapidly disposed of. The reporter of the *Times* says, that scarcely a single case went to a jury. In the undefended causes, of course, proper verdicts were taken; but nearly all the other actions were referred; and he adds, "It was amusing to see the anxious countenances of the different barristers who had friends as counsel in the causes, hoping that they might be appointed arbitrators to decide between the parties, and thus obtain, in the long vacation, good fees to make up for a bad circuit,—for such as regards emolument, it has been to most parties. Whether the heavy expense of a reference will be the means of increasing a love for litigation is extremely questionable." This is a just conclusion, especially when it is remembered that all the expenses of preparing for trial,—the delivery of briefs, the payment of counsel's fees, and the travelling expenses and loss of time of witnesses—have all been incurred.

To the dissatisfaction of the clients must also be added that of attorneys, for these compulsory references are all confined to the bar, and rarely or ever to the other or junior branch of the profession. The Metropolitan and Provincial Law Association, in the last Report, (see 3A L.O. p. 42,) adverted very significantly to this subject. We shall be glad to hear from our subscribers in the country, whether there has been any alteration in this practice.

RECENT DECISIONS IN THE SUPERIOR COURTS.

AND SHORT NOTES OF CASES.

Rolls Court:

Hardy v. Green. July 27, 28, 1849.

MARRIAGE SETTLEMENT.—FUTURE PROPERTY.—INSOLVENCY.

Upon the marriage of certain parties an agreement was entered into for the execution of a deed, settling the husband's as well as the wife's future property, in her separate use for life, then to her husband for life, with remainder to the issue of the marriage. Neither parties had any property at the time and the husband soon after took the benefit of the act. He became entitled upon the death of his brother to real and personal property;

Held, that the property was subject to the trusts of the settlement, and did not pass to the assignees under the insolvency.

THIS suit was instituted by James Josiah Hardy and Mrs. Elizabeth Irwin, wife of James Brook Irwin, against the defendant George Green and others, to establish certain articles of agreement, dated June 29, 1843, and a deed of Oct. 9, 1846. It appeared that the articles were executed on the marriage of Mr. Irwin with Elizabeth Beaman, and it was agreed that a deed of settlement should be made as soon as conveniently might be, of all the property then belonging to the lady, or to which she might

thereafter become entitled, upon trust for such persons as she should appoint, and in default of appointment to her separate use for life and then to her husband for life, with limitations over to the issue of the marriage. It was also agreed that the settlement should contain a similar covenant on the part of the husband, settling all his future property to the same uses and trusts as that of his wife. Mr. Irwin had no property on his marriage, and soon afterwards took the benefit of the act. His brother, however, died in India in December, 1845, leaving Mr. Irwin his heir-at-law to his real and personal estate. The official assignees claimed the property for the benefit of the creditors, whereupon this suit was instituted.

Turner and Jervis for the plaintiffs.

Russell and Rogers, for the official assignees, contended, that the covenant did not give any specific lien on any part of the husband's property, and that the covenant was contrary to the policy of the law, as it incapacitated him from ever possessing any property or satisfying the claims of his creditors.

Lewin, Flather, and Hoare, for the other defendants.

The Master of the Rolls held, that in the absence of all fraud or allegation of fraud, a covenant of this description was binding and ought to be enforced in equity. Such an agreement might be imprudent, but still it was one which might be executed and carried into effect, and was not contrary to the policy of the law, as contended by the official assignees. The instruments must therefore be established as prayed, and the property declared subject to the trusts of the settlement.

Vice-Chancellor of England.

In re North Midland Rail. Company's Act, Ex parte Slater's Devisees. June 29, 1849.

PAYMENT OUT OF COURT. — RAILWAY. — COSTS.

A railway company had paid into Court and invested certain monies for the purchase of land settled on a tenant for life, with remainder to his children, who were infants. Upon a petition presented, when the children became of age, for payment to them and the tenant for life: Held, that the company were liable to pay the costs under the 6 & 7 W. 4, c. cvii. s. 52.

THE North Midland Railway Company requiring certain lands for the purposes of their railway, paid into Court and invested the purchase money. The property was settled on a tenant for life, with remainder to his children, who were infants. The children having attained their majority, presented this petition for payment out of Court to the tenant for life and his children, and also for the costs of this petition.

Speed, in support of the petition. *Chapman*, contra, contended, that the company were not liable to pay the costs, citing the 6 & 7 W. 4, c. cvii. s. 45, which provides for the application

of compensation money amounting to 200l, under the 1 Geo. 4, c. 35, and the 52nd section, which enacts, that "where, by reason of any disability or incapacity of any party entitled to any lands to be taken or used, or in respect of which any satisfaction, recompense, or compensation shall be payable, under the authority of this act, the purchase money for the same or the money paid for such compensation, shall be required to be paid into the Bank of England, it shall be lawful for the said Court to order the costs, charges, and expenses attending the purchase or the taking or using of such lands, or which may be incurred in consequence thereof, and also the costs, charges, and expenses of the re-investment of the purchase or compensation money in other land, and likewise the costs, charges, and expenses (occasioned only by the passing of this act, and not by litigation between claimants or otherwise) of any proceedings had, as herein-before authorized, for the investment of such purchase or compensation money in government or real securities, and for the payment of the interest and dividends thereof, and of the payment of such government or real securities, or of the money to be produced by the sales thereof, out of Court," &c., "to be paid by the said company."

The Vice-Chancellor held, that the company were liable to pay the costs under the words of the 52nd section, "payment of money out of Court," even if the act did not contemplate the payment of the money out of Court to the persons entitled.

Vice-Chancellor Knight Bruce.

In re North of England Joint-Stock Banking Company, Ex parte Sadler. July 4, 1849.

WINDING-UP ACT.—LIST OF CONTRIBUTORIES.

Held, upon motion to reverse the Master's decision inserting the name of a husband on the list of contributories in respect of six shares bequeathed to his wife before marriage, and of which she had executed the deed of transfer, that his name was properly inserted on the list, although the wife's name had not been registered by the company on account of her refusing to pay a call when due.

THIS was an application to exclude the name of the petitioner, Mr. Sadler, from the list of contributories to the banking company, under the 11 & 12 Vict. c. 45, in respect of six shares belonging to his wife. It appeared that the shares were bequeathed to his wife, Mary Todd, before her marriage, and that a deed of transfer had been executed by her and the executor of the will. The company had, however, on her application to be registered as a proprietor, refused to accede to her request, unless she paid a call then due. The call was not paid, and the lady married Mr. Sadler.

Russell and Manisty in support of the application; *Bacon and Headlam* contra.

The Vice-Chancellor held, that the petitioner

was liable in respect of the shares, as his wife had executed the deed of transfer, and that, therefore his name was rightly included in the list of contributories, and refused the application.

Vice-Chancellor Wigram.

In re Nesbitt's Settlement. July 21, 1849.

TRUSTEES' RELIEF ACT.—PAYMENT TO NEW TRUSTEES.

Order made for payment out of Court to new trustees of fund paid in under the 10 & 11 Vict. c. 96, where the number of trustees was complete and no breach of trust was apprehended.

THIS was a petition under the 10 & 11 Vict. c. 96, (The Trustees' Relief Act,) for the payment to new trustees of certain trust funds paid into Court under section 1, by the surviving trustee under a marriage settlement. The new trustees had been appointed under a power in the settlement by the tenant for life.

Wood and C. Hall in support of the petition; *The Solicitor-General and Follett* for the parties entitled in remainder, contra.

The Vice-Chancellor said that, although it might be right for a retiring trustee to have an opportunity of exercising a discretion as to the new trustees, yet as there was the full number of trustees and no breach of trust was apprehended, it was not the practice of the Court, at the application of one party entitled, to order the money to be paid into Court, and the principle was not affected by the 10 & 11 Vict. c. 96. The payment into Court made no difference in the case, and the fund would therefore be paid out of Court to the new trustees as prayed.

Queen's Bench.

(Before the Four Judges.)

Hammond v. Bendyske and another. June 15, July 5, 1849.

FRIENDLY SOCIETY.—ORDER OF JUSTICES.—DISTRESS WARRANT.—PRACTICE.

Where an appeal is made to magistrates instead of arbitrators in a dispute between a member of a friendly society and the society, and the magistrates order a sum of money to be paid by the society: Held that a summons to show cause why the money had not been paid must issue before the sum can be recovered by distress warrant.

A rule nisi had been obtained upon leave reserved to set aside the verdict returned for the defendants in this action, and to enter it for the plaintiff. The action was brought against two magistrates of the County of Cambridge for an illegal distress, by the plaintiff, who was a member of a friendly society, and had been, together with another person, as stewards of the society, ordered by the defendants to pay a sum of money to a former member of the so-

ciety. The defendants pleaded not guilty by statute, and justified under a warrant for levying the amount made under the 10 Geo. 4, c. 56, ss. 28, 29, (the Friendly Societies' Act.) The rule nisi had been obtained on the question, whether the distress warrant ought to have been issued without a previous summons to show cause why the money was not paid.

Byles, S. L. and Metcalfe, against the rule; *Watson, Q. C., Keane, and Couch*, in support.

The Court, after taking time to consider, held that an order of justices made in the matter of a dispute between a friendly society and one of its members, could not be enforced in the event of disobedience thereto, without a previous summons to the persons to whom it was directed, calling on them to show cause why it should not be enforced. The rule to enter the verdict for the plaintiff was therefore made absolute.

Court of Exchequer.

Smith v. Williams. Hilary Term, June 6, 1849.

ATTORNEY AND AGENT.—TAXATION OF BILL OF COSTS.

A rule was made absolute to refer an agency bill to taxation, under the 6 & 7 Vict. c. 73, s. 37.

THIS case was argued in Hilary Term last, on the application to make absolute a rule granted to refer an agency bill to taxation, and stood over for the consideration of the Court.

Martin showed cause against the rule, which was supported by *Smythies*.

The Court said, that the authorities on the subject of the taxation of an agency bill at common law, before and after the Attorneys' and Solicitors' Act, were not uniform, and that, therefore, the question turned on the construction of the statutes relating thereto. In equity, according to *Jones v. Roberts*, 8 Sim. 397, the Court of Chancery has jurisdiction to order an agent's bill to be taxed, on the application of the solicitor who employed him, on the latter paying the amount of the bill into Court.* According to the cases of *Weymouth v. Knipe*, 3 New Ca. 387; *Cardale v. Bull*, 4 Q. B. 611; *In re Gedge*, 2 D. & L. 915, and *In re Simons*, 3 D. & L. 156, neither the 2 Geo. 2, c. 23, as amended by the 12 Geo. 2, c. 13, s. 6, nor the 6 & 7 Vict. c. 73, renders agency bills liable to taxation. On the other hand, however, in the case of *Billing v. Coppock*, 1 Exch. R. 14, where C., an attorney in London employed B., also an attorney in London, to defend a person indicted at Cambridge for bribery at an election there, it was held that the bill of costs delivered by B. was taxable. The 6 & 7 Vict. c. 73, confers more extensive powers of taxation on the Court than the 2 G. 2, c. 23, not merely of fees, charges, and disbursements for business transacted in suits, but also for all business done in his character

* See also, *Toghill v. Grant*, in *re Boord*, 2 Beav. 261; *Less v. Nuttall*, 2 Myl. & K. 264.

of an attorney or solicitor. There is no reason why a London attorney, who is employed as such by a country attorney, should not deliver his bill for such agency, and be liable to have it taxed. Nor does the objection that the taxing officers would be unable to tax the bill, as to a great extent the charges depend on mutual arrangement, affect the question, for in ordinary business the same arrangement may take place, and then it becomes the duty of the Master to take into consideration the terms of such arrangement. The 6 & 7 Vict. c. 73, s. 37, therefore, applies to an agency bill, and the rule must consequently be made absolute.

Prerogative Court.

(*Coram Sir H. J. Fust.*)

Squire and another v. Wray and others.

July 6, 1849.

PROBATE OF DRAFT WILL WHERE ORIGINAL WAS DESTROYED UNINTENTIONALLY.

Probate was granted on the draft of a will where the original was destroyed by the testatrix while in a state of incapacity, and it was clear it was destroyed accidentally.

A WILL had been executed on the 11th May, 1848, by Mary Cox, the instructions for which had been given on the 6th of the same month. The deceased was not long after attacked with palsy, and on the 26th May, destroyed the will while in a state of incapacity. The testatrix died on the 4th July. Under these circumstances, this application was made to grant probate on the draught of the will.

The Court said, that there was no doubt the will was accidentally destroyed, and granted probate of the draught—the costs of all parties to be paid out of the estate.

Court of Bankruptcy.

(*Coram Mr. Commissioner Fane.*)

Anon. July 21, 1849.

DEBTOR AND CREDITOR ARRANGEMENT ACT—PROTECTION FROM ARREST.

Held, that in order to entitle a petitioner under the 7 & 8 Vict. c. 70, to protection from arrest, the Court must be satisfied that the debts of such petitioning debtor have not been contracted without reasonable probability at the time of contract of being able to pay the same.

THIS was a petition, under the 7 & 8 Vict. c. 70, (the Debtor and Creditor Arrangement Act,) on behalf of a barrister, praying that the proposal for the future payment of his debts and engagements might be carried into effect under the superintendence and control of the Court, and that he might in the mean time be protected from arrest by order of the said Court. It appeared that the debts and liabilities were above 4,000*l.*, and there were 71 creditors.

Lewis, in support of the petition.

His Honour said, that before protection was granted under the 7 & 8 Vict. c. 70, it should be seen that debtors came strictly within the meaning of the act, which justifies these secret proceedings in cases of arrangements between debtors and creditors, and extends such extraordinary privileges to debtors. In this case the petitioner had, it appeared, no reasonable probability at the time of contracting his debts of being able to pay the same, and under these circumstances, therefore, protection could not be granted, and the petition must be dismissed.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Equity.

PRINCIPLES OF EQUITY.

[For the previous Sections of this Series of the Digest in the present Volume, see,—

Privy Council:

Appeals, 88.

House of Lords:

Appeals, 171.

Courts of Bankruptcy, 211.

Courts of Equity:

Law of Costs, 234.

Law of Wills, 254.

Construction of Statutes, 371.

Law of Property and Conveyancing, 303.

Pleading, 394.]

ACCOUNT.

1. The equitable jurisdiction in matters of account is concurrent with that of Courts of Law, and no precise rule can be laid down as to the cases in which it will be exercised, this Court reserving to itself a large discretion upon the subject, in the exercise of which it will pay due regard to the nature of the case and the conduct of the parties, and will not restrain an action already commenced, merely on the ground, that from the number and complexity of the items in the account, a judge *ad nisi prius* would urge the parties to refer it.

An injunction in such a case refused on the ground of delay; the bill not having been filed until six months after the action was commenced, and the injunction not moved for until another six months after moving, and when the cause was ready for trial. *North*

Eastern Railway Company v. Martin, 2 Phil. 758.

Case cited in the judgment: *Thorpe v. Hughes*, 3 Myl. & C. 761.

2. *Opening settled account on ground of fraud.*—*Special directions in decree in favour of accounting party.*—Where an entry in an administrator's account, which had been settled, was shown to be fraudulently made, the whole account was opened, notwithstanding the lapse of 40 years since the death of the intestate, 17 since the settlement of the account, and more than two since the discovery of the entry complained of. Special directions inserted in the decree for the protection of the accounting party. *Alfrey v. Alfrey*, 1 M.N. & G. 87.

Cases cited in the judgment: *Vernon v. Waddry*, 2 Atk. 119; *Wodderburn v. Wodderburn*, 4 Myl. & C. 41; *Brownell v. Brownell*, 2 Bro. C. C. 62; *Miller v. Craig*, 6 Beav. 433.

3. *Concurrent jurisdiction.*—*Action at law.*—The cases in which this Court will interfere to have complicated accounts taken in the Master's office, instead of leaving them to be ascertained by an action at law, are difficult to define, and must be very much in the discretion of the Court. *South Eastern Railway Company v. Martin*, 1 H. & T. 69.

See *Illegal contract*, 1.

BOND.

Cancellation.—*Settlement.*—In contemplation of a marriage settlement between a lady, who was an orphan and a Protestant, and a gentleman, who was a Roman Catholic, a settlement was executed, to which the lady's uncle was a party, and the subjects of which were stock belonging to the lady, and two sums of money, one secured by the uncle's, and the other by the gentleman's bond, and both of them payable to the trustees of the settlement twelve months after the date of the bonds. The settlement, after declaring trusts in favour of the lady and gentleman and their children, provided that, until the marriage should be duly had and solemnized according to the forms of the Church of England, or in case it should not be so solemnized within 12 months next after the date of the settlement, the trustees should stand possessed of all the trust monies, securities, and premises, and the securities for the same, in trust for the lady, her executors, &c., and should pay, assign, and transfer the same accordingly. The marriage never took place. After the uncle's death, his bond was found amongst his papers, with the words "Cancelled, the marriage never having taken place," written by him across the face of it.

The Court, though it did not consider the bond to be invalidated, held that, according to the true construction of the proviso, the lady was not entitled as the cestui que trust of the bond. *Miford v. Reynolds*, *Ex parte Pettie*, *Ex parte the East India Company and the Bank of Australia*, 10 Sim. 130.

CHARITY.

1. *Trustee.*—*Municipal Corporation Act.*—

Under a will dated in 1624, real and personal property was vested in the Corporation of Reading, upon certain trusts for the poor of that town; and if the corporation neglected to perform those trusts, or misemployed the property for one year, the will gave it over to the Corporation of London, in trust for Christ's Hospital. In 1639, a decree was made on an information, which directed the Corporation of Reading to apply the income of the property for the benefit of the poor of that town, but in a manner different from that prescribed by the will, and that, if the Corporation of Reading should neglect to perform the premises, or should mis-employ the property for one year, they should convey it to the Corporation of London in trust for Christ's Hospital. The Corporation of Reading neglected to perform the directions of the decree for several years. In 1837, certain individuals were appointed trustees of the property in their place, under the Municipal Corporation Act.

The Court held the decree of 1639 to be binding, and the legal estate in the property to be still vested in the Corporation of Reading; and ordered them to convey the property to the Corporation of London, in trust for the hospital. *Christ's Hospital v. Granger*, 16 Sim. 63.

2. *Vacancies in corporation trustees.*—The Court will not make an order for filling up the vacancies in charity trustees by the appointment of particular individuals without a reference to the Master. *In re Shrewsbury School*, 1 M.N. & G. 85.

CHARTER.

Construction.—*Usage.*—By a charter of Philip and Mary, in Latin, of Jan. 6, 1553, after reciting that 18 presbyters, 15 clerks, and 12 poor men had been lately maintained at Boston, out of the issues of certain guilds since dissolved, and whereof the possession had been seized by the Crown, to the grief of all the Catholic inhabitants there: It was witnessed that, considering a provision for Divine worship, and the maintenance of the poor, and the education of youth, belonged to the regal office, and at the humble petition of the mayor and burgesses, and in consideration of the charges which they sustained in and about the reparation of the bridge and port, and that they might be better able to sustain these charges, the king and queen granted certain lands to the corporation, to the intent that they should find and maintain a grammar school in Boston, and a schoolmaster, two priests to celebrate divine service in the parish church, and four poor persons to pray for the souls of the king and queen, and their ancestors, with a direction to apply all the rents and profits "ad sustentacionem pedagogi et suppedagogi Scole predictæ, ac Cappellanorum et pauperum predicti, ac alia necessaria predicti Burgum Scholam, Cappellanos, et pauperes predicti, et sustentacionem et manutencionem eorumdem, tantummodo tangentia et concernantia."

Held, that the trusts were for religious pur-

poses, education, and the relief of the poor exclusively. Effect of usage in the construction of charters. *Attorney-General v. Corporation of Boston*, 1 De G. & S. 519.

Case cited in the judgment: *Bristol case*, 2 Jac. & W. 321.

See *Corporation*, 2.

CO-PARTNERSHIP.

Limited liability.—*Vis major*.—By the terms of the resolutions on the formation of a company, the object of which was to purchase land and found a colony, certain trustees had the control of an expedition to explore the district, and it was resolved that the expense of the expedition should not exceed a certain sum, and that the subscribers were not to be liable beyond a fixed amount. On the arrival in the country of the persons proceeding on the expedition, they were seized and thrown into prison, and owing to this the project failed, and the loss greatly exceeded the limit fixed by the resolutions: *Held*, that the trustees could not call on the subscribers for contribution beyond the fixed amount. *Gillan v. Morrison*, 1 De G. & S. 421.

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1. **Breach of confidence.**—*Injunction*.—The Court will interfere by injunction to prevent a party availing himself in any manner of a title arising out of a violation of right or breach of contract or confidence.

The cases in which the Court refuses to interfere by injunction until the legal right is established at law have no application to cases in which the Court exercises an original and independent jurisdiction to prevent a wrong arising from a violation of right or breach of contract or confidence. *Prince Albert v. Strange*, *Same v. Judge*, 1 M'N. & G. 25.

Cases cited in the judgment: *Duke of Queensbury v. Shebbeare*, 2 Eden, 329; *Abernethy's Lectures*, 3 Law J., Ch., 809; *Tipping v. Clarke*, 2 Hare, 393; *Wyatt v. Wilson*, temp. Eldon, 1820.

2. **Waiver of objection to injunction.**—A party having, at the suit of A. and B., submitted to an injunction restraining him from publishing certain etchings, the work of A. and B. respectively, cannot object to an injunction granted on the application of A. restraining the publication of a catalogue or description of the etchings, on the ground that it is too extensive, as not clearly identifying which of such etchings belong exclusively to A. *Prince Albert v. Strange*, *Same v. Judge*, 1 M'N. & G. 25.

CORPORATION.

1. **Interference of Court in administration.**—The doctrine of *Foss v. Harbottle*, 2 Hare, 492, and *Mozley v. Alston*, 1 Phill. 790, as to the interference of this Court in the internal administration of incorporated companies, confirmed. *Lord v. Governor and Company of Copper Miners*, 2 Phill. 740.

2. **Construction of grants and charters.**—A charity was founded some time in the 12th century, and was commonly called "The

Master, Brethren, and Sisters of the Hospital of St. John the Baptist." In the time of Charles 2nd, the mastership of the hospital and the lands, &c., belonging to it, were granted to the corporation of Chester. The leases of the hospital lands had never been granted by the corporation under their common seal; but, in the leases, the corporation was described as being the master of the hospital, and the rents were reserved to the master, brethren, and sisters. An information was filed against the corporation of Chester and the parties who had been trustees of the charity estates under the Municipal Corporations Reform Act, to ascertain the charity lands, and to have a scheme for the due regulation of the charity; to which information the master, brethren, and sisters of the hospital were not made parties as a corporate body. It was decided by the Court that they did not form a corporate body; and, consequently, an objection, that they ought to have been made parties to the information, as a corporation, was not sustained. The objection, that the hospital ought to have been a party to the information as a corporate body, was not taken by the corporation of Chester until several years after the decree had been made. Whether such an objection, if valid, would be allowed to be taken by such a party after such a lapse of time, *quære*? *Attorney-General v. Corporation of Chester*, 1 H. & T. 46.

3. **Trustees.**—Under what circumstances the Court will make an order for filling up vacancies in charity trustees under the Municipal Corporation Act. *In re Shrewsbury Charities*, 1 M'N. & G. 84.

See *Charity*, 1.

EXECUTOR.

One of two executors, who were stated to have possessed their testator's assets jointly, died before a suit was instituted for the administration of the testator's estate: *Held*, that the representative of the deceased executor was not a necessary party. *Clark v. Webb*, 16 Sim. 161.

FOREIGN LAW.

Importation of prohibited articles.—*Jurisdiction*.—The Courts of this country will not refuse to administer justice between joint importers of any article of commerce merely upon proof that in the production or exportation of such article some fiscal law of the country of produce has been violated. *Sharp v. Taylor*, 2 Phill. 801.

Case cited in the judgment; *Pellecat v. Angell*, 2 Cr., Mee., & Rose, 311.

See *Illegal Contract*, 1.

FRAUD.

Undue influence.—*Guardian and ward.*—*Promissory note.*—Two years and a half after a young lady had come of age, A., who had been her guardian, and with whom she still resided, drew a promissory note in her favour, and she, at his request, indorsed it.

Shortly afterwards, a third person paid the note to his bankers, (who knew that A. was

insolvent and had been the young lady's guardian,) and they, on the faith of the indorsement, paid a cheque which he had drawn in favour of A.

The Court restrained the bankers from suing the young lady on the note, and would not order her to pay the amount of it into Court. *Maitland v. Backhouse*, 16 Sim. 58.

See *Account*, 2.

HUSBAND AND WIFE.

Contempt.—*Separate answer.*—A husband in contempt for want of answer of himself and his wife, and against whom a writ of sequestration had issued, put in a separate answer without leave, and obtained an order that his contempt should be discharged on payment or tender of the costs of the contempt. A motion, by way of appeal, to discharge that order, was refused, the plaintiff not having applied to take the answer off the file, and being therefore considered to have waived the irregularity. But the order was varied, by allowing the plaintiff to take up the contempt at the point to which it had been already prosecuted, in case the answer should not be sufficient. *Steele v. Plomer*, 1 H. & T. 149.

Case cited in the judgment: *Gee v. Cottle*, 3 My. & Cr. 180.

See *Married Woman*.

ILLEGAL CONTRACT.

1. *American fiscal law.*—*Decree for account of sale of ship.*—A. and B., British subjects, purchased and repaired an American-built ship, on a joint speculation, with a view to employing her in the trade between the two countries, until an opportunity should occur for re-selling her to advantage; for which purpose they procured her to be registered in the United States in the name of C., a citizen of that country, upon a false declaration that she was *bona fide* the sole property of C. After the ship had made several voyages, B., who had had the management of her, attempted to exclude A. from his share in the speculation, and in spite of the dissent of A., sent her on another voyage to America: *Held*, that, even supposing the declaration above mentioned, and the registration thereby effected, to have been a fraud upon the American law, and the subsequent employment of the ship so registered to have been a fraud upon the English navigation laws, such fraud would not prevent A. from maintaining a suit against B. for an account and payment of his share of the realised profits of the speculation. And in decreeing such account, the Court also directed an inquiry what had become of the ship since she was sent on her last voyage, and what was her value when so sent, with a view to making B. personally liable for such value, in case either the ship or the proceeds of her sale should not be ultimately forthcoming. *Sharp v. Taylor*, 2 Phill. 801.

2. *Money arising therefrom.*—Illustration of the distinction between enforcing illegal contracts and asserting title to money which has

arisen from them. *Sharp v. Taylor*, 2 Phill. 801.

Cases cited in the judgment: *Tenant v. Elliot*, 1 Bos. & P. 3; *Farmer v. Russell*, 1 Bos. & P. 296; *Thomson v. Thomson*, 7 Ves. 473.

INFANT.

1. The object of the Custody of Infants' Amendment Act, (2 & 3 Vict. c. 54,) was to enable married women, who should be ill-treated by their husbands, to assert their rights as wives, without being restrained by the fear of being separated from their children; for which purpose the Court of Chancery is invested by the act with a discretionary power, which, by its inherent jurisdiction, it did not possess, of interfering with the common law right of a father to the custody of his children, such power varying in extent according as the children are under or above seven years of age. *Warde v. Warde*, 2 Phill. 786.

Cases cited in the judgment: *Shelley v. Westbrook*, 1 Jac. 266; *Wellesley v. Duke of Beaufort*, 2 Russ. 1.

2. Where, upon an application by a wife, who had obtained a sentence of divorce against her husband, for the custody of her children, the conduct of her husband appeared to be such as clearly to render it improper that he should have the custody of the eldest child, a girl of 11 years old, the Court made an order for the delivery of all the children (two of whom were under seven years of age) to the mother, holding it unnecessary to consider it would have made the same order with respect to the second child, who was a boy of nine years old, if his case had stood alone, as the effect of the children being brought up in different custodies would be likely to create factions in the family. *Warde v. Warde*, 2 Phill. 786.

3. A female infant entitled to a fund in Court, was resident abroad, with a guardian appointed by a foreign Court. The Vice-Chancellor ordered the dividends of the fund to be paid to her solicitor, he undertaking to remit them to the guardian. *In re Morrison*, 16 Sim. 42.

4. *Maintenance.*—*Appointment of guardian.*—*Semble*, that 1 W. 4, c. 56, s. 32, empowering the Court, on the petition of the guardian of an infant, to direct payment of maintenance out of dividends of stock standing in infant's name, does not authorize the appointment of a guardian, and a direction for payment of dividends upon the same petition, although the guardian appointed is one of the petitioners, but that two petitions are proper. *In re Pongerard*, 1 De G. & S. 426.

INJUNCTION.

Publication of etchings generally.—Where A. and B. were respectively the makers and owners of several etchings of which a catalogue was proposed to be improperly published by a person who had surreptitiously obtained copies of the etchings, and a bill was filed by A. against the publisher of the catalogue and B., A. was held to be entitled to an injunction to restrain the publication of the catalogue generally, not

only, so far as it related to his own dealings, but likewise so far as it related to those of B. also. *Prince Albert v. Strange*, 1 H. & T. 1.

See *Copyright*, 1, 2; *Jurisdiction*, 2; *Laches*, 3.

JURISDICTION.

1. A covenant between vendor and purchaser, on the sale of land, that the purchaser and his assigns shall use, or abstain from using the land, in a particular way, will be enforced in equity against all subsequent purchasers with notice, independently of the question whether it be one which runs with the land, so as to be binding upon subsequent purchasers at law. *Tulk v. Moxhay*, 2 Phill. 774.

Case cited in the judgment: *Duke of Bedford v. Trustees of British Museum*, 2 Myl. & K. 552.

2. *One branch of the Court dissolving injunction of another.*—Where a cause has been transferred from one branch of the Court to another, the latter will not question the correctness of the exercise of judicial authority by the former on a previous application.

But where it appears that a plaintiff, on obtaining ex parte an injunction from one branch of the Court, had withheld information which might have induced that branch of the Court to make a different order, the injunction so obtained may be dissolved on that ground by another branch of the Court to which the cause has been transferred. *Sturgeon v. Hooker*, 1 De G. & S. 484.

See *Account*, 3; *Foreign Law*; *Specific Performance*.

LACHES.

1. *Irregularity.*—An objection of mere form, not going to the substance of the case, should be taken speedily; for if a party, being aware of such objection, allows his adversary to take consequential proceedings without noticing it, he will not be allowed afterwards to raise it. *Steele v. Pomeroy*, 2 Phill. 780.

2. *Suit founded on legal demand.*—A plaintiff was required to account for the delay of 19 years in filing his bill, where the circumstances of the parties had changed by deaths; and the foundation of the suit being a legal demand, the Court, after such delay, declined to act; unless the demand was established in an action. *Blair v. Ormond*, 1 De G. & S. 428.

3. *Action by surveyors against railway company.*—*Injunction.*—Where surveyors had commenced an action against a railway company for a large balance claimed in respect of work done; and monies expended by them for the railway company, the particulars of demand in such action being 400 in number, but there being no dispute as to the sums paid by the company on account, this Court refused to restrain the prosecution of an action at law, where the railway company had, by their bill, asked a discovery as to numerous documents, and stated that they should thereby be enabled to defend the action at law, and had not applied for an injunction till more than a year after the action had been commenced, and when it was likely

to come on soon for trial. *South Eastern Railway Company v. Martin*, 1 H. & T. 69.

Case cited in the judgment: *Thorp v. Hughes*, 3 My. & H. 762.

MARRIED WOMAN.

Liability of separate estate for work done in respect of it.—The circumstance that the solicitor of a husband and wife has transacted business relating to the separate estate of the wife, is not sufficient to make that estate directly liable for the amount of his bill of costs. *Calow v. Howie*, 1 De G. & S. 531.

PARTNERSHIP.

See Copartnership.

PAUPER'S ESTATE.

A pauper allowed to sue as a pauper. *Wellesley v. Wellesley*, 16 Sim. 1.

PRINCIPAL AND AGENT.

The captain of an Indiaman, on arriving at Madras, reported his arrival to the Government Board there, and was directed by them to place himself under the orders of the Commercial Committee at that place. After which he made an offer to the Government Board, through the Commercial Committee, to purchase some cotton belonging to the India Company, at a certain price. The Government Board accepted the offer, conditionally, and wrote a letter to that effect to the Colonial Committee. The plaintiff, on being shown the letter, objected to the conditions; in consequence of which the Commercial Committee took upon themselves to dispense with it.

Held, that the India Company could not enforce the condition against the plaintiff. *Smith v. East India Company*, 16 Sim. 76.

Case cited in the judgment: *Whitehead v. Tuckett*, 15 East. 400.

REAL ASSETS.

Form of suit by specialty creditor.—*Amendment of bill.*—*Statute of Limitations.*—The proper form of a bill by an equitable mortgagee, being also a specialty creditor, who seeks to charge the real assets of a testator generally, as well as to enforce his security, is on behalf of the plaintiff and all other the creditors of the testator; and the Court permitted a plaintiff at the hearing to amend his bill accordingly; and with reference to the Statute of Limitations: *Held*, that such bill must date from the day of the filing of the original bill, and not from the day of the amendment. *Blair v. Ormond*, 1 De G. & S. 428.

Case cited in the judgment: *Trotter v. Trotter*, 5 Bln. 383; Jac. 533.

SPECIFIC PERFORMANCE.

Jurisdiction.—*Seems*, that a decree for specific performance should not declare that the agreement ought to be performed, if a good title can be made. *Clive v. Beaumont*, 1 De G. & S. 396.

TRUSTS.

See Charities, 1; 23; *Copartnership*, 3.

WARRANT.

See Fraud; *Refusal*; 4.

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OPERATION OF THE NEW BANKRUPTCY ACT.

TRANSACTIONS AFFECTED BY BANKRUPTCY.

THE alterations created in that branch of the law relating to debtors and creditors, by the operation of the Bankrupt Law Consolidation Act, have been adverted to in previous numbers in general terms, but it is proposed, from time to time, to consider in detail, the nature and effect of the more important changes introduced by the recent act.

It is essential to the security of all persons dealing with those liable to become bankrupts, to ascertain under what circumstances the law does, and when it does not, protect dealings and transactions with parties who may afterwards, either by their own acts, or at the instance of friendly or hostile creditors, become bankrupt.

The existing law, with respect to the validity of transactions with parties who subsequently become bankrupt, is governed by provisions contained in the several acts of the 6 Geo. 4, c. 16; the 2 & 3 Vict. c. 11; and the 2 & 3 Vict. c. 29. The first and last of these acts are wholly repealed, and the 2 & 3 Vict. c. 11, is repealed, so far as relates to the protection of purchasers against secret acts of bankruptcy and fiats in bankruptcy, by the Bankrupt Law Consolidation Act. Rightly to understand the operation and effect of the late act, it is necessary to bear in mind the precise terms of the enactments for which it is substituted.

By the 6 Geo. 4, c. 16, ss. 81 & 82, all conveyances, contracts, dealings, executions, and attachments, by or with a bankrupt, or against his lands, goods, or chattels, more than two months before the date of the commission, are declared to be valid, not-

withstanding any prior act of bankruptcy, provided the person dealing with the bankrupt had not notice of such prior act. And in like manner, payments made *bond fide* by or to a bankrupt, before the commission, were to be deemed valid, notwithstanding any prior act of bankruptcy, provided the party dealing with the bankrupt had not notice of such act of bankruptcy, or that such payment was not a fraudulent preference.

To render a transaction valid under this act it was necessary that it should have taken place two months before the commission, and that the party dealing should not have had notice of any prior act of bankruptcy. The first of these conditions, namely, the limitation as to two months, was altered, as regards *conveyances*, by the 2 & 3 Vict. c. 11, s. 12, which, after declaring that it was expedient to make further provision for the protection of purchasers against secret acts of bankruptcy and fiats, enacted, "that all conveyances by any bankrupt *bond fide* executed before the issuing of any fiat, should be valid notwithstanding any prior act of bankruptcy, provided the person to whom such bankrupt conveyed had not, at the time of such conveyance, notice of such act." And by section 13, the 86th section of the 6 Geo. 4, c. 16, was re-enacted, which provided, "that no purchase from a bankrupt *bond fide* and for valuable consideration, where the purchaser *had* at the time notice of an act of bankruptcy, should be impeached by reason thereof, unless the commission was sued out within twelve months after such act." The principle involved in the alteration giving validity to "conveyances" by a bankrupt, under the 2 & 3 Vict. c. 11, was extended to all contracts with a bankrupt as well as to executions and attachments against him, by the 2 & 3 Vict. c. 29,

which, after reciting the 6 Geo. 4, c. 16, s. 81, and the 2 & 3 Vict. c. 11, enacts:—

“That all contracts, dealings, and transactions, by and with any bankrupt, really and *bond fide* made and entered into before the date and issuing of the fiat against him, and all executions and attachments against the lands and tenements, or goods and chattels, of such bankrupt, *bond fide* executed or levied before the date of the fiat, shall be deemed to be valid, notwithstanding any prior act of bankruptcy by such bankrupt committed: Provided the person or persons so dealing with such bankrupt, or at whose suit, or on whose account, such execution or attachment shall have issued, had not at the time of such contract, or at the time of executing or levying such execution, or attachment, notice of any prior act of bankruptcy by him committed: Provided also, that nothing herein contained shall be deemed or taken to give validity to any payment made by any bankrupt, being a fraudulent preference of any creditor, or to any execution founded on a judgment on a warrant of attorney, or cognovit, given by any bankrupt by way of such fraudulent preference.”

The language of this statute has received a judicial construction in a great variety of cases. It was, amongst other things, determined in the cases of *Whitmore v. Robertson*^a and *Skey v. Carter*,^b that the effect of the 2 & 3 Vict. c. 29, was to substitute its enactments for the 81st and 82nd sections of the 6 Geo. 4, c. 16; but that the 108th section of the 6 Geo. 4 was not repealed by the act of Victoria, and continued in force. Upon this construction, it was held, that an execution, founded on a warrant of attorney or cognovit, was still within the operation of the 108th section of the 6 Geo. 4, c. 16, and was not protected against the effect of an act of bankruptcy or fiat before the sale, though the seizure had taken place before the act of bankruptcy.^c The words of the 6 Geo. 4, c. 16, s. 108, were as follow:—

“That no creditor having security for his debt, or having made any attachment in London or any other place, by virtue of any custom there used, of the goods and chattels of the bankrupt, shall receive upon any such security or attachment more than a rateable part of such debt, except in respect of any execution or extent served and levied by seizure upon, or any mortgage of, or lien upon, any part of the property of such bankrupt before the bankruptcy: Provided, that

no creditor, though for a valuable consideration, who shall sue out execution upon any judgment obtained by default, confession, or *nil dicit*, shall avail himself of such execution to the prejudice of other fair creditors, but shall be paid rateably with such creditors.”

This section, however, was materially modified by the 1 Will. 4, c. 7, s. 7, which, after reciting that the above provision of the 6 Geo. 4 deterred plaintiffs from accepting cognovits with stay of execution, whereby the expense of further proceedings might be saved, proceeded to enact:—

“That no judgment signed, or execution issued, after the passing of this act, on a *cognovit actionem* signed after declaration filed or delivered, or judgment by default, confession, or *nil dicit*, according to the practice of the Court, in any action commenced adversely, not by collusion for the purpose of fraudulent preference, shall be deemed or taken to be within the said provision of the said recited act.”

A careful perusal of the several provisions above cited will tend to elucidate the nature and extent of the alterations effected by the 12 & 13 Vict. c. 106. The effect of the 2 & 3 Vict. c. 29, is that an act of bankruptcy prior to the executing and levying of an execution, which is construed to mean the *seizure* under it,^d has no operation upon the rights of the execution creditor, provided the execution creditor had not notice of the act of bankruptcy at the time of the seizure. Under this act, if notice of the act of bankruptcy was after the seizure but before the sale, it did not affect the rights of the execution plaintiff, but he was still entitled to his priority. By section 133 of the new act,^e however, to protect a creditor who sues out an execution *bond fide* against the goods of a bankrupt, there must be a sale as well as a seizure before the fiat, and notice of an act of bankruptcy “at the time of making any sale,” will render the proceeding inoperative against the assignees of the bankrupt. It is right to add, however, that the alteration may be said to have been suggested by the judgment of the Court of Exchequer in *Whitmore v. Green*. In that case the execution creditor had notice of the act of bankruptcy, before the sale, but not before the seizure, and the reported judgment of the Court—to the effect that the sheriff was not liable in trover at the suit of assignees—contains the following

^a 8 Mees. & W. 463. ^b 11 Mees. & W. 571.

^c Per Parke, B., in *Cheston v. Gibbs*, 12 Mees. & W. 126.

^d *Cheston v. Gibbs*, *supra*; *Whitmore v. Green*, 13 Mees. & W. 104.

^e Printed without abridgment, *ante*, p. 206.

passage:—"It would have been very right for the legislature to have enacted, with respect to executions, that an act of bankruptcy should not operate until the time that the execution creditor had notice of it, and then should have the effect of an act of bankruptcy; and then, no doubt, in this case the act of bankruptcy would date from the time of the notice, and so would defeat the execution, because at the time of the bankruptcy the execution plaintiff would still have been a creditor, but the legislature have not done so." The legislature has now in effect enacted, that notice of an act of bankruptcy before the sale shall operate to defeat an execution, and the importance of this change of the law cannot fail to be understood by those who have had much practical experience on the subject.

Section 108 of the 6 Geo. 4, (above cited,) as to creditors having security, is re-enacted by the 12 & 13 Vict. c. 106, s. 184, but with some material modifications. It is as follows:—

"That no creditor having security for his debt, or having made any attachment in London or in any other place, by virtue of any custom there used, of the goods and chattels of the bankrupt, shall receive upon any such security or attachment more than a rateable part of such debt, except in respect of any execution or extent served and levied by seizure and sale upon or any mortgage of or lien upon any part of the property of such bankrupt before the date of the fiat or the filing of a petition for adjudication of bankruptcy: Provided always, that nothing herein contained shall be deemed to give validity to any warrant of attorney, cognovit, or consent to a judge's order declared to be null and void by any provision of this act; nor to give validity to any judgment entered up under or by virtue of any such warrant of attorney or consent, or to any execution or extent executed or levied under or by virtue of any such warrant of attorney, cognovit, or consent."

The introduction of the words "and sale," in the former part of the section were necessary to render the enactment consistent with the words contained in section 133, already referred to, and the proviso as to warrants of attorney, cognovits, and judges' orders by consent, was meant, it may be presumed, to give effect to the very important provisions of the new act,^a with respect to the validity of these instruments.

The scope and effect of the changes introduced by the Bankrupt Law Consolidation Act in the law affecting warrants of attorney, cognovits, and consents to judges' orders, will be the subject of consideration in a future number.

TAXATION OF AGENCY BILLS.

PERHAPS no subject could be pointed out on which there is so remarkable an absence of uniformity, as in the decisions of the Common Law Courts, regarding the power of referring an agents' bill to the Master for taxation. The latest decision on the point is to be found in a judgment pronounced by the Court of Exchequer, towards the close of the last term, in a case *Smith v. Williams*,^a which would seem to unsettle all that was previously held to be law in relation to this matter, in other Courts. It was at one time contended, that the Courts had a general jurisdiction, independent of any statutory provisions, to refer an attorney's bill for taxation in all cases; but that proposition was successfully struggled against, and for more than a dozen years it has been considered settled law, that the Courts have no other power to refer an attorney's bill for taxation without his consent in any case, than that derived from the statute law.

Some doubts seem to have been entertained, whether the provisions of the 2 Geo. 2, c. 23, s. 23, authorizing the Court to order an attorney's bill against his client to be taxed, did not also include the power of referring bills between attorney and agent, but the legislature interposed to put an end to this doubt, and expressly enacted by the 12 Geo. 2, c. 13, s. 6, that the 12 Geo. 2, c. 23, should not extend to any bill of fees, charges, and disbursements between one attorney or solicitor and another; and it was determined by the Court of Common Pleas,^b that as agents' bills were expressly exempted from the operation of the former statute, the Courts had no power to refer such bills to taxation, even though an action should be depending to recover the amount of such bills.

Thus stood the Statute Law and the authorities up to the passing of the Attorneys' and Solicitors' Act, (6 & 7 Vict. c. 73,) which repealed the whole of the 2 Geo. 2, c. 23, and so much of the 12 Geo. 2, c. 13, as relates to attorneys and solicitors. The

^a See 13 Mees & W. p. 112.

^b See sections 135, 136, and 137, relating to warrants of attorney, cognovits, and judges' orders, *ante*, p. 306.

^a See page 351, *ante*.

^b In *Weymouth v. Knipe*, 3 Bing. New Ca. 387.

only question, therefore, is, whether under the 37th section of the 6 & 7 Vict. c. 73, which contains the whole of the Statute Law relating to the taxation of attorneys' bills, a bill between agent and attorney is the subject of a compulsory reference? The 6 & 7 Vict. c. 73, obtained the Royal Assent in August, 1843, and in 1845, we find that the question was mooted in the case of *Re Gedye*,^c in the Bail Court, whether the new act did not operate to entitle the Court to refer an agent's bill to taxation? It was urged in support of the application, that as under the new act the order to tax may be made, not only upon the application of the client but of the attorney and solicitor, or their respective executors, administrators, and assigns, as well as by other persons not legally chargeable with the debt,^d it could not have been intended to exclude agency bills; but Mr. Justice Coleridge, before whom the case was argued, considered, that as the 6 & 7 Vict. c. 73, expressly altered the previously existing law as to executors and others, as to the business to which the right of taxation extended, the proper inference was, that the legislature did not intend to change the law with respect to agency bills. In *Re Gedye* was again acted upon, by the same learned judge, in a case of *Symons v. Peacock*,^e and was sanctioned and followed by Mr. Justice Patteson in *Re Symons*,^f where one attorney sued another for business done in the County Court. Some doubt, however, was for the first time thrown upon these decisions, by what fell from one of the Barons in a case of *Billing v. Coppock*,^g in the Court of Exchequer in Trinity Term, 1847. In that case, one London attorney employed another to go down to Cambridge to defend a person indicted for bribery, and the bill for conducting the defence was ordered by Baron Alderson to be referred to taxation. Upon a motion for a rule to rescind the order for taxation, upon the ground that the learned Baron had no jurisdiction to refer a bill between one attorney and another to taxation, Baron Alderson appeared to think that the relation of attorney and agent did not seem to exist

between Mr. Billing and Mr. Coppock, but that the one was the client of the other, the charges not being upon the usual scale of agency business. Baron Rolfe, however, intimated an opinion that it was not the intention of the legislature to except agency bills from the operation of the 6 & 7 Vict. c. 73, and assuming the relation of agent and attorney to exist, that the order was properly made. Upon one or other of these grounds, (from the report it does not clearly appear which,) the Court refused to grant a rule to rescind the learned Baron's order; but it will be observed that the point was not fully argued in *Billing v. Coppock*, and that the case may have been decided upon the ground that the bill sought to be submitted to taxation in that case, was not an agency bill, but a bill incurred by a client, who happened to be an attorney. *Billing v. Coppock* can therefore hardly be considered an authority for the proposition, that an agent's bill is taxable at the instance of the principal.

The case of *Smith v. Williams*, first above adverted to, however, is undoubtedly a clear and distinct decision upon the subject and entitled to all the weight which the determination of one of the Courts of Law carries with it upon a question of construction. In that case the bill sought to be referred for taxation was an agency bill, the authority of the Court to refer such a bill was fully argued,—all the cases were cited,—the Court took time to consider its judgment, and finally resolved,—that upon the true construction of the 6 & 7 Vict. c. 73, a London attorney employed by an attorney in the country, was bound to deliver a bill, under the 37th section of the statute, and liable to have it taxed. Upon examining the grounds, as disclosed by the judgment, upon which the Court of Exchequer arrived at a conclusion, exactly the reverse of that to which Mr. Justice Coleridge and Mr. Justice Patteson had previously come in the cases argued before them, and in direct contradiction to what we have reason to believe has been the general understanding in the profession since the 6 & 7 Vict. c. 73; became the law, we doubt whether they will be found satisfactory. The judgment proceeds upon a mistake in fact; when it assumes that the 6 & 7 Vict. c. 73, leaves the 2 Geo. 2, c. 23, unrepealed. As already observed, it is one of the acts repealed altogether! Whether the 2 Geo. 2, did or did not apply to agency bills, is therefore immaterial. The legislature must be presumed to have known what

^c Reported 2 Dowl. & L. 915; 14 Law J., Q. B. 398.

^d See *Maugham's Attorneys' and Solicitors' Act*, note *h*, p. 41.

^e 3 Dowl. & L. 156.

^f 3 D. & L. 156, and 15 Law J., Q. B. 41.

^g 1 Exchequer Reports, p. 14. It is right, however, to observe, that the taxation clauses are framed on the principle that all kinds of costs should be subject to taxation.—Ed.

the state of the law was when the 6 & 7 Vict. c. 73, was under consideration. It is clear beyond controversy, that by the operation of the 12 Geo. 2, c. 13, s. 6, agency bills were not then taxable under the 2 Geo. 2, c. 23; and as no words are cited from, or can be found in, the existing statute, from which it can be fairly inferred, that the legislature meant to alter the law with respect to agency bills, we may be pardoned for expressing a doubt, whether upon any sound principle of construction, such an intention can be implied from the total absence of any provision on the subject. If either of the other Courts of Law, deliberately adopt the construction put upon the act, by the Court of Exchequer, in *Smith v. Williams*, the matter must be treated as settled, but until this be done, the question should be considered as still open to argument.

NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

[The Statutes of this Session printed in the last and the present Volumes, are as follow:—

- Buckingham Assizes, vol. 37, p. 408.
- Inclosure of Commons, vol. 37, p. 408.
- Appointment of Overseers of Poor, vol. 37, p. 448.
- Law of Larceny Amendment, vol. 37, p. 471.
- Annual Indemnity, vol. 37, p. 489.
- Petty Sessions in Counties and Boroughs, p. 78, *ante*.
- Maintenance of Poor out of Workhouses, p. 101, *ante*.
- Costs of Distraint for Highway Rates, p. 127, *ante*.
- Defective Powers of Leasing, p. 187.
- Sheriff of Westmoreland, p. 220, *ante*.
- Passengers' Regulation, p. 239.
- Relief of Poor in Cities and Boroughs; p. 259.
- Small Debts, p. 280.
- Bankruptcy Law Consolidation Act, pp. 297, 317.
- Joint-Stock Companies Winding-up Amendment Act, 1849.]

INCLOSURE OF COMMONS EXTENSION.

12 & 13 VICT. C. 83.

An Act further to facilitate the Inclosure of Commons, and the Improvement of Commons and other Lands. [1st August, 1849.]

This act recites the 8 & 9 Vict. c. 118; the 9 & 10 Vict. c. 70; the 10 & 11 Vict. c. 111; the 11 & 12 Vict. 99. And that it is expedient the provisions of the said acts should be further extended: it is therefore enacted as follow:

1. *New boundaries of parishes may be set out.*—That it shall be lawful for the valuer in the matter of any inclosure, with the approbation of the Inclosure Commissioners for Eng-

land and Wales, to declare by his award how much and which part of any of the lands to be allotted, divided, or dealt with by such award, or of any roads passing over or through the same or any part thereof, shall be and be deemed to be situate in any parish or parishes in which any of the land so to be divided, allotted, or dealt with shall be situate; and after the date of the confirmation of such award so much and such part of such lands and roads shall be and be deemed part of the parish or parishes in which such award shall declare them to be situate: Provided always, that no such declarations as aforesaid shall be made in any award where it shall appear to the said Inclosure Commissioners that there is any dispute or difference as to the parish or parishes in which such land or road, or any part thereof respectively, to be dealt with by such declaration, is situated: Provided also, that no award containing such declaration as aforesaid shall be confirmed by the Inclosure Commissioners, where it shall appear to them that the boundaries of any counties would be affected by such declaration, until notice in writing under the hand of the valuer of his intention to insert the same in his award shall have been served upon the respective clerks of the peace of the counties, the boundaries of which may be affected by such declaration, or shall have been left at their respective offices of business, and if within the space of 14 days after the holding of the next General Quarter Sessions for each of such counties, or of the last of such respective sessions, a requisition in writing under the hand of the clerk of the peace of either of such counties, and countersigned by the chairman who shall have presided at such Sessions as aforesaid holden for the same county, requiring the omission of such declaration from such award, shall be sent to the Inclosure Commissioners, such Commissioners shall not confirm such award with such declaration as aforesaid therein.

2. *Persons having rights of common may be dealt with as a class.*—That whenever persons interested in any land to be inclosed under the provisions of the said recited acts shall be entitled to any similar rights of common or other similar rights over the lands to be inclosed, and it shall appear to the valuer in the matter of such inclosure that it would be for the benefit of such persons to be dealt with as a class in the matter of such inclosure, it shall be lawful for the said Inclosure Commissioners, on the representation of the said valuer, to call a meeting of the persons interested, for the purpose of ascertaining whether two-thirds in number of the persons present at such meeting shall be desirous of being dealt with as a class, and the Commissioners shall, if they shall so think fit, appoint an Assistant Commissioner to be present and preside at such meeting, and to take the votes of the persons present thereat; and such Assistant Commissioner (if any) or the chairman of the meeting shall report to the said Commissioners whether two-thirds in number of the persons present at such meeting

are desirous of being dealt with as a class as aforesaid; and if it shall appear that two-thirds of such persons are desirous of being dealt with as a class, it shall be lawful for the Commissioners, by an order under their seal, if they shall so think fit, to direct that the persons entitled to such similar rights of common or other similar rights as aforesaid shall be dealt with as a class; and after such order all the provisions of the said recited acts applicable to a class shall be applicable to the persons so interested in the matter of such inclosure, as if they had been a class under the provisions of the said recited acts.

3. *Meetings for instructions.*—Doubts having arisen whether, under the provisions of the first-recited act, after a meeting shall have been holden to give instructions to a valuer in the matter of any inclosure, any other meeting after such first can be holden for the purpose of giving further instructions to such valuer in the matter of such inclosure; it is declared and enacted, That in all cases where in the matter of any inclosure a meeting shall have been holden for the purpose of giving such instructions, it shall be lawful for the said Commissioners to call other meetings to give further instructions to the valuer in the matter of any inclosure, subject to all the provisions of the said first-recited act, as regards the first meeting held for the purposes aforesaid, so far as the same shall be applicable to the second or any subsequent meeting; and when any instructions shall have been given previously to the passing of this act to the valuer in the matter of any inclosure at a meeting for such purpose subsequent to the first instructions, and allowed by the said Commissioners, the same shall be as valid and of the same force and effect as if they had been given at the first meeting called for such purpose; provided that the Commissioners shall not allow any instructions given at any second or subsequent meeting, whereby any arrangement entered into or made by the first instructions for the protection or convenience of any persons interested in the inclosure shall be prejudicially affected, if such persons, after such reasonable notice to be given for that purpose as the Commissioners shall think fit, shall signify, in writing to the Commissioners, their dissent from such subsequent instructions.

4. *Commissioners may complete proceedings.*—That all the powers and authorities in anywise enabling the said Commissioners to complete proceedings under any local act of inclosure shall be applicable to proceedings under the provisions of 6 & 7 Wm. 4. c. 116.

5. *Quit rents, chief rents, and heriots.*—That it shall be lawful for the said Commissioners in the matter of any inclosure, by the provisional order, or by any other order under their seal, to declare that an allotment or allotments in lieu of quit rents, chief rents, or heriots shall be given to the lord of the manor to whom such quit rents, chief rents, or heriots are payable out of any old inclosure in respect of which an allotment would be made, or would

have been payable out of any such allotments on the confirmation of the award, and the valuer shall upon the issue of such provisional or other order set out such allotment or allotments; provided always, that no such allotment in lieu of such quit rents, chief rents, or heriots shall be made except with the consent of such lord.

6. *Money raised by sale of land.*—That where any monies shall have been raised by sale of land in the matter of any inclosure for the expenses thereof, and any balance out of such monies shall after the payment of such expenses remain in the hands of the Inclosure Commissioners, it shall be lawful for the said Commissioners to pay the same to the persons interested, in such proportions and under such restrictions or conditions as they deem just.

7. *Exchange and partition of rights, &c.*—That all the provisions of the recited acts applicable to the powers of exchange and partition under the said recited acts shall extend and be applicable to the exchange of all rights of common, rights of fishing, manorial and other rights, and all easements over any land, and all quit rents, chief rents, heriots, tithes, and rent-charges for any other of the said rights, easements, and things, whether of the same or a like or a different nature, or for land, and also to the partition of the same respectively; and when two or more persons shall be interested jointly, severally, as a class, or in common, in any rights or property proposed to be exchanged or partitioned under this or the said recited acts, the application of two-thirds in value of the persons so interested jointly, severally, as a class, or in common, as aforesaid shall be deemed the application of all persons interested or having any estate therein.

8. *Separate tracts.*—That where lands proposed to be inclosed under the said recited acts shall consist of separate tracts of open and common arable, meadow, and pasture lands or fields, entirely or in part, or of common or waste lands subject to rights of common, entirely or in part, or shall otherwise consist of separate and distinct tracts, and it shall appear to the said Commissioners that two-thirds in value of the persons interested in the entirety of such tracts shall have assented to the proposed inclosure on the terms and conditions in their provisional order specified, it shall be lawful for the said Commissioners, if they shall see fit, to proceed therewith.

9. *Extending provisions of recited acts to the fixing of boundaries.*—That all the provisions of the said recited acts applicable to the ascertaining, setting out, and fixing the boundaries of any parish or manor in which the land proposed to be inclosed, or any part thereof, shall be situated, and of any parish or manor adjoining thereto, shall extend and be applicable to the ascertaining, setting out, and fixing of the boundaries of any township, vill, hamlet, or tithing, not having separate ownership of the poor, and of a manor, although the same shall not abut or adjoin upon any other manor.

10. *How persons exercising acts of ownership*

may be proceeded against. 7 & 8 Geo. 4, c. 30. Remedies independent of this provision to be unprejudiced.—That if in any case, after the valuer acting in the matter of any inclosure shall under the authority and direction of the Commissioners, and in manner provided by the said first-recited act, have ordered all or any part of the rights of sheep-walk, common, or other rights, in or over the land to be inclosed, or any part thereof, to be extinguished, or the exercise thereof to be suspended, or after such valuer shall under the authority of the same act have directed any allotment to be made in such inclosure to be entered upon by the person for whom such allotment is intended, any person, other than and except, as to any allotment directed to be entered upon, the person for whom such allotment is intended, shall exercise any act of ownership upon or in respect of any land the rights in, upon, or over which have been so extinguished or shall be so suspended, or any land so directed to be entered upon, whether by erecting huts or other buildings or erections thereon, or by putting up fences, or digging therein, on being convicted thereof before two justices of the peace having jurisdiction in the county or place, shall forfeit and pay for and in respect of every such act of ownership such sum of money not exceeding 5*l.* as such justices shall think proper to inflict by way of penalty, and such sum shall be paid to the valuer, to be applied by him in aid of the expenses in such inclosure, or to the person lawfully in possession of such allotment, as the justices may think fit and direct; and the justices may by their order legally vest any property or effects erected or placed upon the land by the exercise of any such act of ownership in the valuer, to be removed, sold, and applied by him in aid of such expenses, or in the person lawfully in possession of such allotment, as the justices may think fit and direct; and the provisions of the act of 7 & 8 Geo. 4, intituled "An Act for Consolidating and Amending the Laws in England Relative to Malicious Injuries to Property," concerning the prosecution of offenders punishable on summary conviction under such act, and the form of such conviction, and concerning the cases of a summary conviction under such act where the sum which shall be forfeited for the amount of injury done shall not be paid, and all other provisions of such act consequent upon or in relation to such proceedings and conviction, shall be applicable to the offences under this act, and the prosecution and conviction for the same respectively, save that any matter by the said act directed to be done by the justice shall be done by two justices as aforesaid. Provided always, that no remedy which any person in possession of the land under a direction by the valuer to enter thereon might otherwise have in respect of any such act of ownership under the fourthly above-recited act or otherwise, shall be in any manner prejudiced or affected by the provision in this act before contained.

11. *Land held under separate titles by the same person may be exchanged.* Doubts hav-

ing arisen whether, under the said recited acts, a person interested in several subject matters of exchange, but held under separate titles, or for distinct and separate interests, or subject to separate charges or incumbrances, can effect an exchange thereof: it is declared and enacted, That the person so interested as aforesaid, may effect exchanges of such several subject matters of exchange in such and the same manner as if different persons had been interested therein.

12. Recited acts deemed part of this act.

NOTICES OF NEW BOOKS.

On Copyright in Design in Art and Manufactures. By T. TURNER, of the Middle Temple. London: F. Elsworth. 1849.

It does not appear that the Author of this Treatise "on Copyright in Design" is a Member of the Bar, an Attorney, or a Pleader: we presume he is a student of the law; but as his work displays considerable talent and knowledge of the subject, we deem it proper to notice it. Mr. Turner states that,—

"Property in form, distinct from that of the material substance or article in which it was exhibited, was, till within a few centuries, quite unknown. It has of late years attracted much notice, various arts having facilitated the multiplication of copies, and Government has paid attention not merely to the legal protection of Design, but to its encouragement by schools of art, museums, &c. while it is not only patronised but practised by Royalty itself.

"Legally the subject has generally been treated of as an appendix to or variation of literary copyright, or of patents. It has, however, an independent character distinct from either of these. 1. In literature ideas are expressed by letters representing vocal sounds; the shape of the black marks, dots or strokes on the paper being immaterial. But in an engraving on a pattern, these are the language of the author, and subject of the right. 2. A patent, again, is properly a right to an art or trade, a process, method or operation, and the forms of machines and vessels are described by the patentee not as the invention, but to show the manner in which it is to be performed. An equivalent apparatus might be substituted without altering the principle of the invention, but it might be a different form and configuration."

The Author divides his matter into four sections, the scope of which may be thus described:—

- 1st. The nature and value of design copyright.
- 2nd. Historic and statistical notices of the subject.
- 3rd. Principles of the legal right as now

administered, and those on which it should be extended:—1. Nature of the right. 2. Formalities constituting it. 3. Its enjoyment. 4. Its violation and remedies. 5. Its duration. 6. Collision with patent right.

4thly. Practical points:—1. Right of publication. 2. Advantages and mode of claiming legal right. 3. Exercise of it and transfer. 4. Breaches of the right and remedies.

‘Mr.’ Turner thus states the effect of the Statute passed in 1842:—

“It repeals all the previous designs acts, and enumerates the application of the designs by printing, painting, &c. at much length, and the purpose, viz. pattern, shape, configuration or ornament. It classes them in twelve divisions, some of them obtaining three years, some one year, and some nine months’ protection; amongst the latter are the bulk of calico prints, the term of which is thus trebled. The novelty is explained as non-previous publication in the united kingdom or elsewhere; the mark to be appended to each article was made more convenient, and the name, which had been objected to, supplied by a cipher; the word proprietor was defined, to prevent any narrowing of the application of the act, and, coupled with this a simple and convenient mode was introduced transferring the ownership. Notwithstanding the liberal construction put on the word copy under the Engravings Acts, the act, like the last, provides against the piratical application, not only of the design, but of any fraudulent imitation of it; and instead of requiring proof of knowledge of the want of the owner’s consent, a mode of giving due legal notice is set out. The penalties are to be adjudged by the usual inferior tribunals; the objections to them were not overlooked by the framers of the act, but it was not deemed necessary to enter on the difficulties and incur the responsibility of making any novel arrangement on this head. The procedure, however, was made obvious and easy, by providing forms of information and conviction, and the option of proceeding in the higher Courts is retained. A provision was introduced to amend an erroneous registration, which, under the prior law, was fatal to the real owner’s right. The enactment against the fraudulent use of the word registered, was perhaps suggested by an (abortive) attempt at a similar regulation as to patents. The time for proceeding was extended from six to twelve months; and, to meet the anticipations of vexatious litigation, the thirteenth clause was inserted at the third reading of the bill, giving costs to a successful defendant. The extension of the act to sellers as well as makers of a piratical article was much contested (some difficulty occurred in *Sheriff’s* case as to the seller, probably as to proof of his knowledge); without this, however, the act would have been in all probability so easily evadable as to be worthless. To meet the objection to the cost and trouble of registering, the fees were expressly restricted in amount as to calico, paper-hangings, and

some other articles, and the number of copies altered from three to two.”

The registry of design requires much care and discretion. It is, as ‘Mr.’ Turner states, “a miniature patent specification.”

“The first point is to get a distinct idea of the essential form, looking to the probable variation it may be capable of, without losing its useful effect or property, and thence adopting the central type or standard of it. Next, the novelty should be clearly distinguished, and it would be best to draw the imaginary variations of the plan, and the old shape which it is to supply the place of, if it be an improvement, or, if the use itself be new, the old shapes which are combined in it. It may then be seen exactly what the drawing for actual registration ought or ought not to show. The simpler the drawing is the better; the act only requires it to be accurate (to a scale) and intelligible. Details, if required, should be drawn slightly, or shaded over; if prominent, they tend to narrow the range of the idea. If part of the article be new and part old, it is convenient to draw one part in red and the other in black lines. If it be a combination of old parts, these may be drawn separately, and then shown together. The drawing may be from any side, or from a section, and may show the article in various positions, or its application by dotted lines, care being taken to make the shape conspicuous, as being what is registered, and not the use or action of it. In a few cases, instead of a drawing, a specimen, as a button, is deposited, if capable of being placed on the page of a book. The next thing is the description to explain the drawing, and define the claims as to novelty; supposing the new and old portions already drawn in distinction, a brief reference will effect the latter object. If the general combination be new, no disclaimer is necessary. The description will state the ‘purpose of utility,’—may mention the particular material for which the form is best adapted, and may repeat in words and make clear the shape itself, referring, if necessary, to marks on parts of the drawing. Part (A) is so and so. The written description should be relied on as much as possible. A word gives the vital principle of a shape, while to many persons a drawing binds the idea down to one particular set of proportions. A spiral spring, for instance, is really a useful shape,—useful by allowing an electric wire to be coiled into compact form; and it is usually made in a cylindrical form (a helix). If a pirate attempted to evade it by a wire coiled into a double cone, like an hour-glass, that would be equally a ‘spiral spring.’ But if both were drawn, the pirate would ask if they were of the same shape, which geometrically and optically they are not. They are only of the same shape as to utility, and the purpose is expressed in the description.

“The registerer has also to choose his title; and in this, as well as the description, he should carefully avoid the use of those words which

the act or the rules have put a black mark against, as principle, action, invention, &c. Processes and changes must only be mentioned as the application; the design itself must be shape, form, and configuration. Thus a 'new lever action' and 'improvements in the art of cutting sails' are objectionable. Apart from this the registrars may please his own fancy. The name may be independent, or describe the article as an improvement on the old one. Designs are occasionally refused registration. There is an appeal from the registrar to the Privy Council, who have in some instances reversed his decision. This appeal only applies to the total rejection of the design, not to the registrar's authority to decide between the ornamental and useful act. The drawing or print for the registration will often be serviceable by way of prospectus or advertisement. The design may be in the name of joint proprietors or a firm, and dated from any part."

Mr. Turner gives a list of the cases he refers to, but does not cite them in the usual manner. Sometimes the date is only given, without the reporter's name, and generally the page is omitted. The appendix contains the four Engraving Acts, the two Sculpture Acts, the two Designs Acts, and the International Copyright Act; with the Rules of the Registrar of Designs.

THE PRACTICE OF RETAINERS.

IN our last (number p. 343.) we quoted very fully the notes of Mr. Basil Montagu, a gentleman well entitled from his learning, experience, and talent, to pronounce an opinion on the practice of the Bar in regard to the retainers, which they are bound to accept in behalf of the suitors of the Court, through the medium of their professional representatives, the attorneys and solicitors. We now proceed to lay before our readers some extracts from an important article in the 4th volume of the *Law Magazine*, (p. 417.)

We are induced to cite the views contained in that journal from the respect to which it is entitled, as a work of much ability and learning, conducted, we understand, entirely by members of the bar, and therefore representing that branch of the profession. We believe also, that the contribution we refer to, was written by the former editor of the work, now one of the Queen's Counsel.

We may hereafter have to advert to some of the points discussed by the learned writer, and for the present would observe, that it may at least be inferred from the article in the *Law Magazine*, as well as from the Notes of Mr. Montagu, that

serious doubts and difficulties existed in regard to the practice of retainers, of great importance, as well to the bar as to the clients, and which it concerned the due administration of justice to ascertain and adjust.

It did not appear that the leaders of the general body of the Bar, either individually or collectively, were disposed to take any steps for settling the points in question, and it remained for the Council of the Incorporated Law Society, at the instance of their members, to endeavour to effect an arrangement that might be satisfactory to the Bar, just to the suitors, and convenient to the profession.

Our readers are aware of the great pains taken by the Law Society to collect the best information on the subject, and to give publicity to the result of their labours. Before proceeding with our notes on the rules so collected, we would wish to call attention to the state of the practice as described in the *Law Magazine*:

"First. A general retainer, which is accompanied with a fee of five guineas, entitles the party who gives it to a preference in retaining the counsel to whom it is given, specially, in any action in which such party may be concerned. It is the duty, therefore, of the barrister thus retained, in case a special retainer should be offered by the adverse party, to ascertain from his general client whether it is his intention to give a special retainer in the cause, and if an answer be returned in the negative, he is then at liberty to accept the retainer of the other party."

"Secondly. If no general retainer interfere, the advocate is bound to the party who gives the first special retainer. But

"Thirdly. A special retainer binds only in the particular cause named. And,

"Fourthly. A special retainer, on behalf of A. against B., may be superseded by a general retainer on behalf of B., C., and D."

The following instances are then given:

"1. A public company gave a general retainer to an eminent advocate, with the usual fee of five guineas. An individual having a claim against the company, and contemplating the probability of an action, sent by his attorney to the same advocate a special retainer in the intended cause. Notice of the offer was accordingly given to the attorney for the company, who urged, in reply, that he was not called upon to give a special retainer until proceedings had actually commenced; but it was decided otherwise, and the retainer, with the fee, was given.

"2. A person deservedly eminent at the Chancery Bar had recommended a suit, ad-

"The right to notice is here distinctly recognized, before accepting the retainer of the opposite party.

^b Surely not a subsequent general retainer.

vised upon the answer, and drawn exceptions which stood for argument; but he had not been formally retained for the plaintiff. The attorney for the defendant, in the mean time, offered him a retainer to argue against his own exceptions, which he thought himself bound, however of course reluctant, to accept. Another learned gentleman, celebrated for his practice in bankruptcy, had resisted, no doubt with his accustomed zeal and ability, the claim of a creditor upon a bankrupt estate, in behalf of which he had frequently appeared on other occasions also as the advocate. Well, he succeeded, after several meetings before the Commissioners, in procuring the rejection of the disputed claim; whereupon the creditor petitioned, and, lo! who should appear in support of the petition, labouring with equal zeal and ability to establish that the proof ought to have been received, but the same learned gentleman who had so successfully advocated its rejection. To be sure he had not been retained upon the petition, and he was therefore compelled to accept the retainer of the creditor, which arrived before the brief of the assignees.

"3. The assignees of a bankrupt, intending to bring an ejectment, gave special retainers to two eminent practitioners on the home circuit; "*Doe dem A. (the assignee) v. Roe, Retainer for the lessor of the plaintiff.*" On settling the declaration, the pleader advised the addition of a count on the demise of the bankrupt: whereupon the attorney for the defendant (being a sharp fellow) gave retainers to the same two gentlemen: "*Doe on the demise of A. and B. (the bankrupt) v. Roe; retainer for the defendant.*" Upon the approach of the trial, each party insisting on his retainer, the question was referred to the then Attorney-General, who decided in favour of the defendant."

"Two actions were brought to recover penalties under the Bribery Act. They were against the same defendant, and attended with precisely the same circumstances; the only difference in the two cases being as to the person alleged to have been bribed. A retainer was given to a renowned leader in the Common Pleas; *A. against B., retainer for the defendant.* The plaintiff's attorney next gave a retainer; *A. against B. retainer for the plaintiff.* The causes stood for trial on the same day, the one immediately following the other; and a contest arising between the attorneys as to the effect of their retainers, the learned gentleman requested them to arrange it between themselves, professing himself at the same time perfectly ready to hold a brief for the defendant in the first cause, and a brief for the plaintiff in the second."

"4. In February, 1785, a policy with three names upon it was put into the hands of *A.* an attorney, to proceed against the underwriters. Actions were accordingly brought by him

against the three, for whom *B.*, an attorney, appeared. In July, 1786, *A.* retained Mr. Erskine, in one action out of the three; about three weeks after which, *B.* gave a general retainer to Mr. Erskine, for all the underwriters, with the usual fee of five guineas. In June, 1787, *A.* gave notice of trial for the sittings after Easter Term in the said three actions, upon which *B.*, on behalf of the underwriters, applied for and obtained the usual consolidation rule. *A.* has made his election to try only that cause wherein he retained Mr. Erskine, and insists that he is entitled to have Mr. Erskine, as his counsel under that single retainer, whereas *B.* insists on behalf of the underwriters, that, under the general retainer, he is entitled to have him as counsel for the underwriters.

"Query. Which of the retainers is binding?"

"The opinions of Mingay, Lee, Baldwin, and Bower, all of them men of extensive practice in that day, agreed that the general retainer was binding."

"A policy was effected 'upon the ship Walsingham,' by a member of a company of ship-owners associated together for the mutual assistance of each others' vessels. A loss having occurred, the settlement of which was disputed, three several actions were brought by the assured against three individual members, for two of whom appearances were entered by the regularly appointed attorney of the company, no person appearing for the third. A special retainer for the plaintiff was given in each of the two cases which proceeded, after which a general retainer was given to the same person by the company's attorney on behalf of the 'underwriters on the ship Walsingham.' The plaintiff proceeded to trial in one only of three actions, and insisted upon his retainer. The question was referred to an experienced member of the profession, since elevated to the bench, and he decided in favour of the general retainer."

The following are the proposed remedies:

"First. That when a general retainer has been given, a special retainer, if ever required at all, at least should not be called for, until a suit has been actually commenced."

"Secondly. That when a barrister has drawn pleadings in a cause, or has advised upon it in some advanced stage of its progress,—in short, when he has necessarily become acquainted with the case of one party, he ought, if not to consider himself absolutely retained in behalf of that party, at all events to give him a preference, or, if we may use the expression, a right of refusal, before he accepts a retainer from the adverse party."

"Thirdly. A retainer ought not to be invalidated by any merely formal change, whether in the name or in the mode of proceeding, whilst the cause remains in substance the same."

"A life had been idly spent in two public offices: actions being brought against each, the learned gentleman was retained for the plaintiff in one, for the defendant in the other; the circumstances of both being, of course, precisely the same. And how did he extricate himself?"

The learned counsel here referred to was Mr. Basil Montagu. This objectionable practice is proposed by the New Rules to be altered.

By the New Rules this is altered.

from the difficulty? Why, by cutting the knot to be sure, by acting as all men of stronger mind do act, when required to decide upon such alterations. He declared that he would not, for any such regulation as was urged upon him, consent to stultify himself; and having held the brief on the one side, he declined to appear as the advocate of the other.

"Fourthly. Our objections to the fourth rule are not, perhaps, of so serious a nature; but for the reasons which have been already assigned, we should be glad that it were altered. The rule in our opinion ought to be, that the first retainer, whether special or general, should be binding and conclusive. The uncertainty which results from the present practice, is a subject of much perplexity and annoyance for the clients; and as it seems difficult to find any assignable reason for it, there can be no impediment in the way of the proposed alteration."
—*Law Magazine*, vol. iv. p. 417.

These remedies, so evidently just, have been adopted in the New Rules, and we doubt not that every honourable man at the bar will accede to them. They settle the principal questions that have arisen.

INCORPORATED LAW SOCIETY.

ANNUAL REPORT OF THE COUNCIL.

We select another section of the Report of the Council made at the last Annual General Meeting of the members of the Incorporated Law Society. The Report thus proceeds:—

REMOVAL OF THE COURTS.

"The subject of the Sittings in Chancery in Lincoln's Inn, instead of Westminster, was again considered in Michaelmas Term last, and another memorial presented to the Lord Chancellor. It was reported that, according to the intention of the judges, the Courts of Equity would sit in Michaelmas and Hilary Terms, but as soon as parliament assembled the Courts would adjourn to Westminster. This would have had the effect of extending the Westminster Sittings from February to August, and be much more inconvenient than the former practice of sitting at Westminster in Term and at Lincoln's Inn in the Vacation;—the Term Sittings occupying about three months of the year; but under the proposed change the Sittings at Westminster would extend to six months, and thus greatly aggravate the inconvenience. The Equity Bar also again interposed; and ultimately, as the members are aware, the Sittings continued during the Hilary Vacation in Lincoln's Inn, and will no doubt be held there in Trinity Vacation.

"During the consideration of the plans for the New Houses of Parliament, a memorial was presented on the part of the Society for the appropriation of rooms for facilitating the despatch of business in which solicitors are engaged whilst attending the Houses of Parliament and the Courts of Law; and, by a re-

turn to Parliament, dated 21st March, 1843, it appeared that in the estimates for the building the sum of 5,000*l.* was set down for "providing additional accommodation for attorneys as recommended by the Law Society." As the Houses are now approaching to a completion, the Council have requested to be allowed to confer with the architect on the subject.

PRACTICE OF RETAINERS.

"In the Annual Reports of the last year and of the year preceding the Council noticed the various communications which they had received on the doubts and difficulties consequent upon the unsettled and unsatisfactory state of the practice with respect to Retainers, and which had given occasion to frequent differences, not only between Barristers and Attorneys and Solicitors, but between Attorneys and Solicitors themselves.

"The attention of the Council was accordingly directed to this very important subject with a view to the establishment of such Rules as might in all ordinary cases enable the practitioners to regulate their proceedings on behalf of their Clients, and for that purpose much pains were taken in correspondence with the Bar and the Profession generally; the result of which was the preparation of regulations, which were printed, and a Copy sent to every Member of the Society, to every practising Attorney and Solicitor in London, and to all the Law Societies in the Country, inviting the favour of their sentiments upon them, stating it to be the anxious wish of the Council that Rules designed to regulate the practice on this important subject should be rendered as perfect as possible, and be adopted with the full concurrence and approbation of both branches of the Profession.

"The Council received several communications and suggestions from Attorneys and Solicitors in answer to their last Circular, to which they gave their best attention, and convened a Special General Meeting of the Society for the purpose of taking into consideration the proposed Rules with a view to their adoption by the Profession.

"The Meeting took place on the 29th November, 1848, and the Rules, with some alterations, were adopted, and a Copy transmitted to every Member of the Bar practising in London.

"Several questions on the application of the Rules have been submitted to the Council, which they have determined according to their construction of them; and they have adopted the following Regulations in order to expedite a decision on future questions:—

"1. That on questions arising on the Retainer, Rules the Secretary shall ascertain that the facts are sufficiently stated and agreed between the parties.

"2. That an immediate appointment be obtained for a Meeting of the Retainer Committee.

"3. That such Committee report their opinion to the Council at their next Meeting.

"4. That a book be kept for entering the Decisions relating to Retainers with references to the Papers laid before the Committee.

"The Council have reason to believe that the Rules they have thus endeavoured to establish, and the mode adopted for deciding the questions that may arise upon them, will be attended with success, and be both advantageous and satisfactory to the Profession and produce a uniform course of practice.

EXCLUSIVE AUDIENCE OF THE BAR AT SESSIONS.

"The exclusive Audience of the Bar at the Sessions of Magistrates has been long established in the Metropolitan District, and as it appears in most of the Counties and Cities; but in some places, where the business is of moderate extent, it has been the practice for Solicitors to attend and advocate cases before the Court. In a recent instance a communication was made to the Council where only two members of the Bar attended at the Sessions and claimed the monopoly of the business. This would appear contrary to the decision in the case of *The Queen v. The Justices of Denbighshire*, wherein it was decided by the Court of Queen's Bench, (T. T. 1846,) that the Magistrates might give exclusive audience to the Bar where four of its members were in attendance; and it seems to follow from that decision that no number less than four will be sufficient. It is observable that the Attorneys claim only equal audience with the juniors of the Bar; but the latter are not content even with pre-audience, but claim it exclusively. This is a question of peculiar interest in comparatively remote districts; but the Council would willingly lend their aid in considering and promoting a remedy for the grievance complained of, and they invite further communications on this and all other subjects affecting the status and welfare of their Brethren, whether in the country or in town."

Nonpayment of Counsel's Fees.—"The Council consider that it is not within their province to interfere in the arrangements made between individual members of the several branches of the Profession in regard to the payment of Fees, the amount of which, in many instances, cannot be ascertained upon the delivery of the papers. But, though such be the general rule, they think that occasions may arise when it may be their duty to interfere for the sake of the honour and character of their own branch of the Profession.

"This subject has been noticed in consequence of a communication made to the Council by one of the leading Members of the Bar, relating to the Non-payment of a very large amount of Fees due to him from a Member of the Society for a great length of time. The Council hope their interference may check a practice which must be considered discreditable to the Profession.

* We trust this invitation of the Incorporated Law Society will be accepted by the Provincial Solicitors.—Ed.

CASES OF MALPRACTICE.

Fraudulent discharge of Debtors.—"An extraordinary Fraud having been perpetrated on one of the Judges, in obtaining the Discharge of a Prisoner in execution for Debt, the Council, at the request of the Judge, instituted an Inquiry into the circumstances, for the purpose of discovering and punishing the Offenders, and preventing similar frauds in future, or providing better means for their detection. The Council have made their Report to the Judge, and in order to avoid such frauds in future they have suggested a New Rule of Court which is under the consideration of the Judges.

Complaints against Attorneys.—"The Council during the course of the past year have received more than the usual number of Complaints of Malpractice, and to the investigation of which they have devoted much of their attention. Many of the cases were deemed insufficiently supported to justify the interference of the Society; but some have been brought before the Court on applications to strike the Offenders off the Roll. In one of the Cases the Rule was made absolute; in another a Rule Nisi was granted which has not yet come on for hearing; and there are several still under consideration, or waiting for further Evidence; but as it is clearly not within the province of the Society to entertain every case which relates to complaints of a Client against his Solicitor for delay or want of skill, though accompanied sometimes by charges of misconduct, the Council decline to interfere, and leave the parties to their own remedy.

Unqualified practitioners.—"The Council have received numerous complaints against unqualified persons practising in Conveyancing Matters, and upon receiving evidence of such illegal practice they have submitted the same to the Commissioners of Stamps for prosecution.

THE EXAMINATION OF ARTICLED CLERKS.

"The attention of the Council to the important subject of the Examination has been continued, and they have on the part of the Society received several communications affecting the conduct of Candidates, which they have inquired into and laid before the Examiners; and in this way they trust that they have assisted in carrying into full effect the intentions of the Legislature and the Judges. During the past year ending with Easter Term, 417 Candidates have been examined, of whom 391 were passed, and 26 postponed.

RENEWAL OF CERTIFICATES.

"It has also been the duty of the Council to appear upon several applications to renew Certificates of Practice both in Court and at the Judge's Chambers. The practice assimilates itself to an application for restoration to the Roll, and therefore requires a good deal of consideration. One of them, which is of considerable public importance, was brought before the Court of Queen's Bench in Hilary Term, and referred to the Master of that

Court. It is still under investigation, and the Council abstain therefore from referring to it more particularly.

"The Special applications to dispense with the usual Notice are very numerous, and are founded on Affidavits showing the reasons for the application. They are always referred by the Judge to the Council for inquiry; and they think it important that permission should not lightly be given, lest the object of the Rule should be entirely defeated. The two Classes of Cases in which a full Notice may be dispensed with appear to be—where, in consequence of the death of a Relation of the Applicant, it is essential to continue the practice without delay; or where there is an Agreement for a Partnership, which requires to be speedily fulfilled.

USAGES OF THE PROFESSION.

Conveyancing Practice.—"The Council have as usual entertained various Conveyancing Questions of Professional Practice, brought before them by the Members of the Society, either between themselves or other Solicitors; and the result is shown by a book kept for the purpose in the Secretary's Office.

Restrictive Covenants as to Lessors' Solicitors.—"The Council have had under their consideration the practice of inserting Covenants in Leases requiring the Lessee to employ the Lessors' Solicitor to prepare Underleases or Assignments of Leases, and they had the assistance of a Special Committee on the subject; and, without entering into a discussion of the authorities bearing on the question of the legality of such a covenant, they consider that it is highly objectionable, both as regards the Public and the Profession, and ought not to be encouraged or sanctioned by the Profession.

PARLIAMENTARY COSTS.

"The Council have had under their consideration the Charges of Solicitors in Parliamentary Business, the proposed scale of which was communicated to them by the Taxing Officer, under the recent Act 10 & 11 Vict. c. 69. And they succeeded in effecting a material amendment in the regulations.

ATTENDANCE AT THE NISI PRIUS OFFICES.

"It being very important to the Practitioners engaged in the Trial of Causes at Nisi Prius to ascertain as early as possible the state of the Cause List for each day, it was suggested to the Council that a beneficial alteration might be made in the Attendance at the Offices of the Marshal and Associate of the several Courts of Nisi Prius for London and Middlesex. The present hours of attendance, from 11 till 2, and 6 till 8, differ from those of the other Offices; and the Council therefore suggested the expediency of abolishing the Evening Attendance, and keeping the Office open during the Sittings at Nisi Prius from 11 till 5 o'clock, or until the List of Causes to be tried on the following day could be made out.

"The suggestion has been made by the Marshals and Associates of the Courts of

Queen's Bench and Common Pleas, and it is expedient that a similar rule will be made in the Exchequer of Pleas.

PROVINCIAL LAW SOCIETIES, AND THE METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

"During the past year there has been a considerable increase in the communications usually made between this Society and the several Provincial Law Societies, and the advantage of the co-operation of Members of the Profession practising in different parts of the Kingdom has been experienced on many occasions. It was expected that the continued necessity for protecting the interests of the Profession would have led to the increase of the number of the Provincial Law Societies; but the Council regret to learn that, instead of this increase, some of the late Societies have ceased to meet.

"The Council have particularly to notice the very valuable aid rendered to them by the "Metropolitan and Provincial Law Association" on various occasions, and they trust that the united influence of both bodies will be productive of important results."

[In the next or an early number, we shall conclude the Report.]

NOTES OF THE CIRCUIT.

THE LATE MR. JUSTICE COLTMAN.

Lord Chief Justice *Wilde*, at the close of his address to the Grand Jury at Aylesbury, on the 11th July, with an emotion alike honourable to himself and to his deceased colleague on circuit, thus expressed his feelings:

"I cannot conclude without expressing the real grief of my heart in this day discharging the duties which lie before me, when I remember the care, and anxiety, and judgment with which my brother Coltman would have fulfilled her Majesty's commission in this county, and with so much honour to you and credit to the bench. He indeed, let me say, was well esteemed and highly beloved by all who knew him, as much so as any of those servants of her Majesty who have presided in a court of justice. I think it due to his memory to say, although he was a man who did not seek conspicuous and distinguished notoriety, that he was most remarkable for impartial judgment, and high legal knowledge and attainment. So sensible, indeed, was he of the sound administration of justice in this land, and so upright and honest was his judgment, that never was Mr. Justice Coltman found to swerve. And that judgment was so matured and trained, as always to be open to the force of reason; and most particularly has he displayed the striking difference between firmness and obstinacy, so much so as always to give the fullest confidence in his deliberations. I cannot say that his brethren derived more assistance from him than from any other person on the bench; but his highly

cultivated judgment has tended so much to their assistance as to render their decisions greatly respected, and satisfactory to the country and the legislature. To this Mr. Justice Coltman added an amenity of manner that endeared him to all around; and I may say, without at all meaning to deteriorate from the merits of those learned persons who adorn the bench, that there is not a judge holding her Majesty's commission whom Providence might have taken away from us, who would be more regretted and revered than him whose loss we now deplore. Gentlemen, I have expressed to you my own feelings. I feel that I could not have fulfilled the duties of this day without doing so; and I trust I need ask at your hands no excuse for having detained you by these allusions to so estimable a man."

MR. JUSTICE TALFOURD.

We have already paid our tribute of respect to the new judge, and gladly record the following expression of the feeling of the bar on the circuit of which he was the leader:

"The announcement at Stafford on the 24th July, that Mr. Serjeant Talfourd had been appointed to the vacant judgeship, created a feeling of satisfaction amongst the bar which it would be impossible to describe. From the new leader to the junior, there was not a single member who did not seem to rejoice as if the promotion of the learned serjeant had been the uppermost wish of his heart. We believe that no other leader was ever so truly loved, admired, and respected by his professional bre-

thren. All loved him for his genuine goodness of heart and kindness of manner. He never said an unkind or an ungenerous thing of or to anybody. Even to a witness he could not have retorted unkindly or harshly; and thus never had recourse to what is commonly called the browbeating system. He so overflowed with the milk of human kindness, that even if he would he could not do such a thing. All admired him for his thorough knowledge of his profession, his general literary acquirements, ready fancy, and great eloquence, and respected him for his honesty, purity of thought, love of justice, and in short, all those qualities that contribute to compose the character of an advocate of the highest order. By the juniors he was deservedly looked upon as the model of a circuit leader. One peculiarity of his advocacy ought to be mentioned, as it was the common topic of observation with all the circuit bar, that whatever subject he handled, no matter how dull, dry, or insipid it was, he invested it with singular grace, charm, and interest. We record these opinions of his circuit brethren respecting him as facts which cannot be devoid of interest to the public. The learned gentleman having received official notice of his appointment, immediately returned all his briefs except one, which was in a special jury cause that had been part heard, the plaintiff's case having closed the previous evening." He addressed the jury for the defendant, and then confiding the management of the evidence to his juniors, left the court all the bar rising *en masse* on his retiring. The verdict was for his client."

RECENT DECISIONS IN THE SUPERIOR COURTS.

AND SHORT NOTES OF CASES.

House of Lords.

Barnes v. Pennell and others. July 12, 13, and 16, 1849.

JOINT-STOCK COMPANY.—SETTING ASIDE TRANSFER OF SHARES.—MISREPRESENTATIONS OF SUCCESS OF COMPANY.

Upon appeal from the Court of Sessions of Scotland, held, that in order to entitle a purchaser of shares in a joint-stock company to have the transfer set aside, he must show that false representations as to the prospects and success of the company were made either by the directors or by some authorized person; and that a misstatement by the law-agent employed only to recover the debts, was insufficient to support a charge of fraud.

Semble, (per Lord Brougham,) that a mere

miscalculation of profits will not support a charge of fraud.

THE Forth Marine Insurance Company was formed in 1839, and the capital stock was settled at 100,000*l.*, in 4,000 shares, of 25*l.* each, 10*l.* of which was to be paid on commencing business, and the remainder at such periods and in such instalments as the directors should appoint. Large dividends had been declared, but in 1842, the losses being very great, it was found necessary to make a call of 2*l.* 10*s.* per share. In the same year a Mr. Mackenzie, clerk to the appellants, held 60 shares, which he had purchased in 1841, for 162*l.* 10*s.*, but had only paid at the rate of 2*s.* 10*d.* per share, which he thought was the call made. Upon the application of the directors he did not pay the residue, but the appellant paid the call on a transfer of 50 of the shares after having called on the company's law-agent and been shown their balance sheet and the report of their affairs. The company

in consequence of further losses, were again compelled to make another call of 5*l.* per share, and in 1843, of the remaining 15*l.* per share. The appellant refused to pay these calls, suspecting that the representations made as to the prosperity of the company by their law-agent were untrue, whereupon the directors brought an action for the recovery thereof. The appellant then brought a counter-action against the company, to set aside the sale and transfer of the shares, on the ground of fraudulent misrepresentations of the success of the company on the part of the directors and their officers. The actions having been ordered to be conjoined, were heard by the Lord Ordinary, who pronounced an interlocutor, finding that the appellant's statement was relevant to the conclusions of his action, and disallowing the company's defence. Whereupon they presented a reclaiming note to that finding, to the first division of the Court, who found that there was no averment in the record relevant to set aside the transaction by which the appellant became a partner, or to liberate him from the obligations by reason of his shares, and in the other action by the company decreed against the appellant with costs. The company having become bankrupt, the London official assignee and the creditors' assignees had been substituted for the company, and were the respondents to this appeal, which was presented against the two interlocutors.

The Attorney-General and Mr. J. Anderson for the appellant; Rolt and Inglis for the respondents.

Lord Campbell, (July 16,) in moving the judgment of the House, said, that the whole case depended on the question whether there was such a fraudulent representation as would relieve the appellant from the contract he had entered into, and such fraud must be shown to have been committed by a party whose conduct would bind the company. The law-agent of the company, which was equivalent to the solicitor in England, had made certain misrepresentations of the success of the company, but as he had simply been employed to demand and sue for the company's debts, it was clear he was not in that capacity authorized to make any such representations. Then, on the question that the law-agent being a partner in the company which was joint-stock and unincorporated, bound the remaining partners as in an ordinary partnership,—this company was altogether different to a common partnership, inasmuch as the power of making contracts and transacting the business was vested in the directors and not in the individual shareholders. It was, therefore, immaterial whether the company was incorporated or not. The appellant must have known that the law-agent was not one of the directors, and that he was only employed to recover the debts. There did not appear to be any sufficient allegations sustained to connect with the directors the fraud imputed to them; of making false representations in order to raise the price of the stock or that any such fraud had been committed. It might have

been imprudent to have declared the dividends, but they were paid out of the premiums received up to those periods, and not out of the capital stock, nor with a view to increasing the price of shares. The appellant had, as he admitted, been cognizant of the demands on the company before the purchase, and had shown a want of caution, and was therefore not entitled to be released from his liability in respect of the shares.

Lord Brougham said, that it was not sufficient to show a mere miscalculation of profits to support a charge of fraud, and that, therefore, the judgment of the Court below should be affirmed, citing *Harris v. Kemble*, 2 Dow. & C. 463.

The other Peers present having concurred, the appeal was dismissed with costs.

Vice-Chancellor of England.

Shadbolt v. Thornton. June 8, 22, 1849.

MORTMAIN ACT.—CHARITABLE BEQUEST.—RESIDUE.

A testator after making certain bequests, gave his residuary estates among charities. He also became entitled to leasehold property as personal representative and executor of his sister, who died a few days before him. Held, that the leaseholds should have been converted into money to pay the sister's funeral and testamentary expenses, and formed part of the residuary personal estate of the testator; and held, therefore, that they were not within the Mortmain Act, but passed to the charities.

THIS suit was instituted for the administration of the estate of Frederick Noble, of Brixton, who directed a sum of 500*l.* three per cent. Consols to be invested in the names of the minister and churchwardens of the parish of St. Mark's, Kensington, and that the interest should be applied in repairing the tomb belonging to the testator's family, and that the surplus should be added to each Christmas Day sacramental collection. There was also a direction to erect a tablet in the vestibule of the church to his own memory, and stating the purpose of the bequest. The testator then bequeathed a further sum of 200*l.* Consols to stand in the names of the minister and churchwardens of St. Mary's, Newington, for similar trusts, with the exception of the family tomb. The residue was bequeathed among other charities. The testator was also entitled to certain leaseholds as residuary legatee and executor to his sister, who had died a few days before him.

Amphlett, for the plaintiffs, who were the trustees under the will; *Bethell* and *Marett*, for some of the charities interested in the residue, contended that, as the testator had not elected to take the property of his sister in its specific character, and her funeral and testamentary expenses remained unpaid, the leaseholds should be sold in administering to her estate, and be considered as personally as regarded the testator.

Wray, for the crown, urged that the leaseholds were to be considered as realty, and that the bequest was, therefore, void within the Mortmain Act, and belonged to the crown, there being no next of kin.

J. Parker, De Gez, Oliver, Nicholls, Bagaley, and Leech, for other parties.

The Vice-Chancellor held, that the leaseholds should have been converted into money by the testator as the personal representative of his sister. The property clearly belonged to the testator, he not having survived long enough to elect to take it as leasehold, and therefore it passed to the charities.

Exports Baxter, in re London and North Western Rail. Co. June 22, 1849.

RAILWAY.—COSTS OF SECOND INVESTMENT OF MONEY PAID INTO COURT.

A railway company paid a sum of 265l. into Court, under the 8 Vict. c. 18, and had paid the costs of investing a sum of 192l. in land. Upon a petition for the further investment of 80l.: Held, that the company were bound to pay the costs under the 80th section, as the second investment was for the benefit of the parties interested.

CERTAIN lands at Poulton-by-the-Sands, Lancashire, had been taken by the London and North Western Railway Company, in December, 1847, under the Morecombe Harbour Act, and the purchase money, amounting to 265l., paid into Court under the 8 Vict. c. 18. An order was made in 1848 for the investment of 192l., part thereof, in the purchase of land and costs to the amount of 131l. 8s. 4d. were paid by the company. The landowner, having subsequently entered into a contract for the purchase of another piece of land for 80l., presented this petition for completing the purchase and to have the costs paid by the company.

Roll and Osborne in support of the petition; *Roundell, Palmer, and Hobhouse*, contra.

The Vice-Chancellor said, that by the 8 Vict. c. 18. s. 80, it was enacted, that "the costs of one application only for investment in land shall be allowed, unless it shall appear to the Court of Chancery in England or the Court of Exchequer in Ireland, that it is for the benefit of the parties interested in the said monies that the same should be invested in the purchase of lands, in different sums and at different times, in which case it shall be lawful for the Court, if it think fit, to order the costs of any such investments to be paid by the promoters of the undertaking." The Court could not exercise its discretion on the first application for investment, but as that had been made and a residue had been left in Court under its control, the question as to the payment of costs arose. As it appeared from the affidavits that the investment would be for the benefit of the parties interested, and could not have been made at the same time as the first investment, the railway company must pay the costs.

Vice-Chancellor Knight Bruce.

Prince Albert v. Strange, Attorney-General v. Strange. June 1, 1849.

PRACTICE.—INTERROGATORIES AND DEPOSITIONS.—TITLE.

Where the bill and information have been dismissed against a defendant, held, that the title of the interrogatories and depositions properly omitted his name, although the bill had not been amended by striking out his name.

THESE causes being at issue, the evidence was read by Talfourd, Q. S., when it was objected, on behalf of the defendant, that the interrogatories and depositions were wrongly intitled, inasmuch as the name of Mr. Judge, jun., one of the defendants, was omitted.

The Solicitor-General, for the plaintiff, stated that an order had been made dismissing the bill as against Mr. Judge, jun., before the interrogatories were filed or the depositions taken.

Sidney Smith, for the defendant, contended that, as the bill had not been amended by striking out that defendant's name, it was still on the record, and should therefore be retained in the title of the proceedings.

The Vice-Chancellor held, that the title of the interrogatories and the depositions properly omitted the name of the defendant in question, as the bill and information had been dismissed against him, and the objection was therefore overruled.

In re North of England Joint Stock Banking Company, ex parte Burlington. June 20, 1849.

JOINT-STOCK COMPANY'S WINDING-UP ACT.—CONTRIBUTORY.—HUSBAND AND WIFE.

A motion to reverse the Master's decision inserting the name of a husband on the list of contributories in respect of shares purchased by his wife before marriage, was refused with costs, and the husband was held liable.

THIS was a motion to reverse the decision of Master Farrer, inserting the name of Mr. Burlington, on the list of contributories under the 11 & 12 Vict. c. 45, in respect of certain shares purchased by the wife, and standing in her name before the marriage. The company's deed of settlement provided that upon the marriage of a female shareholder, the husband, in order to be entitled to dispose or become a shareholder in respect of such shares, must do certain acts, and if these were not done, the shares might be declared by the directors to be forfeited. Although these formalities had not been complied with, the name of the shareholder being only changed to her married name, the dividends were received by the husband, who signed the receipts *per procreationem*.

Swanston and Elderton, in support of the motion, cited *Angas' case*, 1 D. G. & S. 560; 37 L. O. 319.

Bacon and Headlam, contra.

The Vice-Chancellor held, that the husband was clearly liable to pay the debts of his wife, and that his name must be on the list of contributories either with or without that of his wife, and that the case of *in re Angus*, cited at bar, did not apply to the present. The motion was therefore refused with costs.

Queen's Bench.

(Before the Four Judges.)

Freeman v. Rosker. May 22, 1849.

TRESPASS.—FIXTURES.—AUTHORITY TO BROKER.

In an action of trespass qu. cl. fr. the defendant pleaded not guilty. On the trial it appeared that the defendant had authorised a broker under a distress warrant to seize goods and chattels, and the broker had pulled down and sold fixtures, paying the proceeds to the defendant, who acknowledged the receipt thereof, without, however, notice of the trespass: Held, that the defendant was not liable for the trespass, and the verdict was entered for him.

THIS was an action of trespass *quare clausum fregit*, to which the defendant pleaded not guilty. It appeared that the defendant had signed a warrant authorizing a broker to seize the plaintiff's goods and chattels, and that the broker had pulled down the plaintiff's fixtures in the belief that they were the chattels which he was authorized to seize. This was the trespass complained of. The defendant had given a receipt to the broker for the money produced by the sale of the fixtures. A rule nisi had been obtained to enter the verdict for the defendant.

The Court, after taking time to consider the case, said, that the authority given by the defendant to the broker was to seize goods and chattels, and not fixtures; and that, therefore, the defendant had not given any authority prior to the seizure. As it had not been shown that the defendant, upon signing the receipt for the proceeds of the sale, had notice of any trespass, the mere receipt of the money did not amount to an adoption of the act of the broker as the defendant's agent. There was consequently nothing to render the defendant liable, except the distress warrant and the receipt, and the rule must therefore be absolute to enter the verdict for the defendant.

Forth v. Simpson. May 23, 1849.

LIEN OF TRAINER ON RACE-HORSES.—EXCLUSIVE POSSESSION.

Held, that in order to entitle a trainer to a lien on race-horses for their keep and training, he must show that he is entitled to their exclusive possession, and therefore, where the defendant might have them when he pleased for racing or otherwise: Held, that he was not entitled to his lien.

THIS was an action to recover 256*l.* claimed by the plaintiff, for the keep and training of three race-horses, which had been taken in execution by the defendant, and a verdict passed for the plaintiff, subject to the opinion of the Court, whether the plaintiff had a lien on the horses in respect of their keep and training.

A rule nisi having accordingly been obtained to enter the verdict for the defendant, *Sheer*, S. L., and *Bovill*, in support of the rule.

Wyatt and Ogle, contra, citing *Jackson v. Cummins*, 5 M. & W. 342; *Scarfe v. Morgan*, 4 M. & W. 270; 1 Horn. & H. 292; *Revas v. Waters*, 3 Car. & P. 520; M. & M. 236; *Jacobs v. Latour*, 2 M. & P. 20; 5 Bing. 130.

The Court held, that in general trainers had a lien on race-horses in respect of their keep and training, but he must show that he was entitled to the exclusive possession of the horses. Here, however, it was clear that the defendant might have possession of the horses whenever he liked for the purpose of running at races or otherwise. The trainer could not be said to have the exclusive possession of them, and had not therefore a lien upon them. The rule must accordingly be made absolute.

Rumbalow v. Whalley. May 31, 1849.

ARBITRATOR.—ACTION BY SURGEON.—UNSKILFULNESS.—EVIDENCE.

Where the subject matter of an action brought to recover a sum for attendance of a surgeon on the defendant's wife, was referred to an arbitrator: Held, that the arbitrator was bound to admit evidence to prove the unskilfulness of the plaintiff; and where, therefore, he had rejected such evidence, a rule was made absolute to set aside his award.

THIS action was brought by a surgeon to recover the sum of 34*l.* 10*s.*, for attending the defendant's wife during her confinement. The defendant pleaded a set-off by payment of 10*l.*, and also payment into Court of 10*l.* Before the trial, however, the matter was referred under a judge's order to an arbitrator, who was a surgeon. The arbitrator had refused to admit evidence to prove the unskilfulness of the plaintiff, on its being objected to by the plaintiff's attorney, on the ground that it was not admissible under the pleadings. Upon the award being made, a rule nisi had been obtained to set it aside, on the ground of such rejection of evidence.

Burcham now showed cause against the rule, and contended, that although the arbitrator had wrongfully rejected this evidence, which was tendered for the purpose of reducing the amount of the debt and damages, yet as the parties had agreed to be bound by his award, it could not be set aside, unless there appeared to be a mistake on the face thereof.

G. Rochfort Clarke, in support of the rule, was not called upon.

The Court held, that the arbitrator ought to

have received the evidence, as the question of the plaintiff's unskilfulness was involved in the value to be placed on his services. The rule must, therefore, be made absolute to set aside the award.

Exchequer.

Wakley, jun. v. Healey and another. June 2, 4, 1849.

LIBEL.—PROOF OF BYE-LAW.—NEW TRIAL.—MISDIRECTION.

In an action for libel which imputed to the plaintiff, a surgeon, unprofessional conduct whereby he had rendered himself liable to be expelled the college under its bye-laws: held that the proof of the existence of the bye-law was material, and that it was not enough that it was alleged in the libel, and a rule nisi was made absolute for a new trial.

THIS was an action for libel to recover compensation for certain articles in the *Medical Times*, charging the plaintiff, who was one of the surgeons to the Royal Free Hospital, Gray's Inn Lane, with unprofessional conduct in "puffing" his surgical operations in the *Lancet* and *Times*, and stating that he had thereby rendered himself liable to be expelled by the College of Surgeons. The declaration, after alleging such libels, stated, that the college, under the charter and bye-laws, had power to expel for unprofessional conduct. The defendants expressly traversed this allegation, and it was not proved that any member of the college had at any time been expelled for unprofessional conduct. The Lord Chief Baron Pollock, who presided at the trial, having held that the averment of the existence of the bye-law in the libel was sufficient evidence of the fact there alleged, a general verdict was given for the plaintiff, with 40s. damages. A rule nisi had, therefore, been obtained to set aside such verdict, and for a new trial on the ground of misdirection, and that the verdict was against evidence.

Martin and *Bramwell* showed cause against the rule, which was supported by *Wilkins*, *S. L.*, *Dearsley*, and *Mills*.

The Court, after taking time to consider, held, that it was material to show that a bye-law existed, conferring the power of expulsion from the college for unprofessional conduct, and that the mere statement in the libel was not sufficient proof of the bye-law, and the rule for a new trial was therefore made absolute.

Prerogative Court.

Tribe v. Tribe and others. July 3, 13, 1849.

WILL.—PROBATE.—ATTESTATION.

Where a will was executed three hours before death, and the curtains of the bed were so closed that the testatrix could not possibly have seen the witnesses attest the will, probate was refused on the ground that the provisions of 1 Viet. c. 26, s. 9, had not been complied with.

THE testatrix, *Frances Tribe*, resided at *Worthing*, and had in May, 1848, executed a will, whereby she bequeathed her property, with the exception of 100*l.*, to her nephew, *William Ford Tribe*. It appeared that she had made other wills in 1832, December, 1846, and also another in December, 1848, a few hours before her death. The several wills varied the disposition of her property, and by the last she divided it amongst her relatives generally. The testatrix had executed the will of 1832, according to an agreement entered into between herself and her two sisters, that each should have the benefit of survivorship, but she had made the will of 1846, in consequence of her sisters otherwise disposing of their property, on account of the testatrix purchasing an annuity for her own life with a sum she had saved, and thereby gave her brother *John* a reversionary interest. In May, 1848, she directed *Mr. King*, a solicitor, to prepare another will, which she executed. In December, 1848, a further will was made, which was proposed by *Mr. John Tribe*, the testatrix's brother, and was opposed by the nephew.

Drs. Harding and *R. Phillimore*, contended that the will of December, 1848, although executed *in extremis*, was made while she was perfectly conscious of its nature.

Dr. Addams, contra, and in support of the will of 1846, urged that undue influence had been used, and that it had been executed in so hasty a manner, and while the testatrix was *in articulo mortis*, that it amounted to a *defect probatio*, citing *Michell v. Thomas*, 5 Notes Ca. 600. *Cur. ad. vult.*

The Court, after alluding to the facts of the case, said, that the circumstance of the will of 1848 having been executed only three hours before her death, calls for the vigilance of the Court to know if the testatrix was of testamentary capacity. It appeared that she had never expressed any intention of altering it prior to the execution of the last will, and that she had frequently complained of the neglect of her relations. Her sister, *Mary Tribe*, who took a large interest in the new disposition of the property, had attended to the testatrix for the last few days of her life, and had spoken of the disposition of the property under the will of 1846. The evidence of this witness was to be received with much caution, as she might represent things more favourably than if she had no interest. Of the capacity of the testatrix, there could be no doubt, but she was in a dying state at the time, and the will was written by *Mary Tribe*, who upon reading the will to the testatrix, sent the witnesses out of the room. It was asserted by the witnesses who were disinterested persons, that the curtains of the bed were so drawn, that the deceased could not have seen them sign, which was contradicted by *Mary Tribe*; but the Court was bound to credit their testimony. The will was not, therefore, executed in compliance with the act of parliament, and must be pronounced against.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Equity.

PRACTICE.

[For the previous Sections of this Series of the Digest in the present Volume, see,—

Privy Council:

Appeals, 88.

House of Lords:

Appeals, 171.

Courts of Bankruptcy, 211.

Courts of Equity:

Law of Costs, 234.

Law of Wills, 254.

Construction of Statutes, 271.

Law of Property and Conveyancing, 293.

Pleading, 334.

Principles of Equity, 352.]

ADMINISTRATION SUIT.

Creditor proceeding in a foreign Court after notice of decree.—*Costs.*—The rule, which prevents a creditor from proceeding with an action for the recovery of his debt after a decree in an administration suit, is applicable to the case of a creditor proceeding in a foreign court, and will render him liable to the costs of an application to restrain him after he has received due notice of the decree. *Graham v. Maxwell*, 1 M'N. & G. 71.

ADMISSIONS.

Patent.—*Equitable assignee.*—*Action at law.*—Where the Court directs an action, instead of granting an injunction, against the equitable assignee of a patent, it will not exact from the defendant any admissions as to the validity of the patent. *Pidding v. Franks*, 1 M'N. & G. 56.

AFFIDAVITS.

1. *In support of amendments, on motion to dissolve injunction.*—Affidavits filed in support of statements introduced into the bill by amendment, after injunction granted, and tending to support the injunction, cannot be read on a motion to dissolve that injunction. *Prince Albert v. Strange, Same v. Judge*, 1 M'N. & G. 47.

Case cited in the judgment: *Norway v. Rowe*, 19 Ves. 444.

2. On a motion to dissolve an injunction granted on an original bill, affidavits filed in support of allegations subsequently introduced, by amendment, to strengthen the plaintiff's case, cannot be read against the defendant. *Prince Albert v. Strange*, 1 M'N. & G. 26.

ANSWER.

Order referring answer after bill amended.—

Form of order referring answer, when the bill has been amended, and defendant directed to answer amendments and exceptions at the same time. *Watson v. Life*, 1 M'N. & G. 104.

See *Husband and Wife*, 3.

APPEAL.

Evidence.—It is competent for the plaintiff, on appeal to the Lord Chancellor, to withdraw from the evidence any portion of the answer which may have been read in the Court below. *Alfrey v. Alfrey*, 1 M'N. & G. 87.

DISMISSAL.

1. *New Orders.*—A cause was put at issue, according to the old practice, more than two months before the Orders of May, 1845, came into operation, but no further proceeding was taken in the cause: *Held*, that the defendant could not move to dismiss the bill for want of prosecution, under the 114th Order, section 4; but must set down the cause for hearing according to the old practice. *Griffith v. Griffith*, 16 Sim. 35.

2. *Before answer, the object of suit being obtained.*—Where, in an injunction suit, the plaintiffs moved before answer that the bill might be dismissed, and that the defendants might pay the costs of the suit, on the ground that the suit was occasioned by their wrongful act, and that all the purposes of it had been attained by the motion for an injunction, the Court, although considering such an application reasonable, declined to introduce a new practice by making the order. *Langham v. Great Northern Railway Company*, 1 De G. & S. 503.

EVIDENCE.

Stamped copy of deed lost.—Where proof is given of the loss of a written instrument by a document which itself shows that such instrument was originally insufficiently stamped, the Court will not presume that the instrument was ever properly stamped, nor admit ordinary secondary evidence of its contents. But the Court received as secondary evidence a draft of such written instrument produced at the hearing, with such a stamp as the instrument itself required, although the instrument appeared to have been only lost by the party sought to be charged, and was not proved to have been fraudulently destroyed by him. *Blair v. Ormond*, 1 De G. & S. 428.

Case cited in the judgment: *Bousfield v. Godfrey*, 5 Bing. 418; *Smith v. Henley*, 1 Phill. 391.

See *Appeal*.

GENERAL ORDERS.

29 and 33 of May, 1845.—Where, in a suit against a husband and wife, the husband fails to enter an appearance for the wife, an appear-

ance may be entered for her by the plaintiff, under the 29th or 33rd Order of May, 1845, on proof of the subpoena against her having been duly served upon the husband only. *Steele v. Plomer*, 2 Phill. 782, n.

HUSBAND AND WIFE.

1. *Entering appearance for wife.*—Leave given, under the 29th Order of May, 1845, to enter an appearance for the wife, the husband having been served on behalf of himself and wife, with subpoena to appear and answer under the 33rd Order of May, 1845. *Steele v. Plomer*, 1 M'N. & G. 83.

2. *Service of Subpoena*—*Entering appearance.*—Where a husband resided out of the jurisdiction, (in Scotland,) and his wife lived apart from him, and the husband had been served, under the 33rd Order of May, 1845, on behalf of himself and wife, with the subpoena and office copy of the bill and order, and the husband had entered an appearance for himself alone, the plaintiff was held entitled, under that order, to enter an appearance for the wife. *Steele v. Plomer*, 1 H. & T. 153.

3. *Joint answer.*—*Separate estate.*—The joint answer of husband and wife may be read against the latter, with reference to her separate estate. *Callow v. Howle*, 1 De G. & S. 531.

See *General Orders*.

INFANT.

Reference of suit.—*Stay of proceedings.*—A reference as to which of two suits is most for the benefit of infant plaintiffs, does not of itself stay the proceedings in the suits. *Westby v. Westby*, 1 De G. & S. 410.

Case cited in the judgment: *Sullivan v. Sullivan*, 2 Mer. 40.

INJUNCTION.

After appearance cannot be ex parte.—After service of subpoena and the appearance of a defendant, a motion for an injunction cannot be made *ex parte*. *Langham v. Great Northern Railway Company*, 1 De G. & S. 486.

Case cited in the judgment: *Perry v. Weller*, 3 Russ. 519.

See *Affidavits*, 1, 2.

MASTER'S CERTIFICATE.

Differing from proceedings, the latter acted on.—*Held*, that if the certificate of the decision given out by the Master to the party appealing differ from the statement on the file of the proceedings, the latter is to be assumed to be the actual decision. *In re Hawthorn*, 1 De G. & S. 571.

PRODUCTION OF DOCUMENTS.

1. *Privileged communications.*—Where a defendant, in his answer, states his ignorance of a fact, save as may appear in his answer or by documents in his schedule, no document in the schedule will be exempted from production, although the answer, as to some, positively states that they are privileged communications. *M'Intosh v. Great Western Railway Company*, 1 M'N. & G. 73.

Case cited in the judgment: *Hardman v. Elames*, 2 Myl. & K. 745.

2. *Production of documents.*—Defendants stated, in the beginning of their answer, that they could not answer farther than as appeared therein, and in the various documents which were set forth in the schedule, and which they offered to produce. In the latter part of the answer they admitted the possession of various documents, but insisted that some of them were privileged communications, and that they were, therefore, not bound to produce them: *Held*, that, after the offer of production in the beginning of the answer, the plaintiff was entitled to the production of all the documents mentioned in the schedule. *M'Intosh v. Great Western Railway Company*, 1 H. & T. 41.

Case cited in the judgment: *Hardman v. Elames*, 2 Myl. & K. 732.

PUBLICATION PASSING.

New Orders.—A cause was put at issue according to the old practice, so long ago as February, 1816; but no further step was taken in it until November, 1847, when the plaintiff moved to withdraw the replication and file a new one. That motion was refused. In December following, the defendant moved to dismiss for want of prosecution. The order then made was, that the plaintiff should set down his cause on a given day, or the bill be dismissed. Before that day arrived the plaintiff examined witnesses. The defendant then moved that the depositions might be suppressed, on the ground that they had been taken after publication in the cause had passed according to the new Orders of May, 1845. The Court refused the motion, and ordered publication to pass on the day before that on which the cause was to be set down. *Thomas v. Lewis*, 16 Sim. 73.

SUBSTITUTED SERVICE.

1. *Subpoena.*—*Defendant out of jurisdiction.*—A defendant to a bill of revivor had appeared to the original bill by his solicitor, but before the filing of the bill of revivor, had gone out of the jurisdiction. The Court ordered that service of the subpoena to appear on the solicitor should be a good service on the defendant. *Norton v. Hepworth*, 1 M'N. & G. 34.

Case cited in the judgment: *Murray v. Vipart*, 1 Phill. 521.

2. After a decree for specific performance, the sole plaintiff died. His personal representative filed a bill of revivor. One of the defendants was supposed to be in America, but he had not absconded within the meaning of the 31st Order of May, 1845, and his actual place of residence was not known. Substituted service of the subpoena for him to appear to the bill of revivor, was allowed to be made upon the solicitor who had acted for him in the original suit. *Norton v. Hepworth*, 1 H. & T. 158.

Case cited in the judgment: *Murray v. Vipart*, 1 Phill. 521.

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SATURDAY, SEPTEMBER 15, 1849.  
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QUARTER SESSIONS COURTS PROCEDURE ACT.

12 & 13 VICT. c. 45.

ALTHOUGH this act, for which the public are indebted to the learned President of the Poor Law Board, does not come into actual operation before the 1st of November next, as it must be considered in a practical and professional view amongst the most important measures of the last Session, no excuse can be deemed necessary for transferring its provisions to our pages without delay and without abridgement, as we now do.

The 12 & 13 Vict. c. 45, may be regarded as an extension of the principles contained in the act of last Session "to amend the Procedure in respect of Orders for the Removal of the Poor, and Appeals therefrom," to all matters in respect of which the Courts of Quarter Sessions exercise an appellate jurisdiction. The 11 & 12 Vict. c. 31, related exclusively, as its title imports, to orders of removal and appeals therefrom, a branch of the law justly and generally complained of as furnishing the most striking and discreditable example of a multitude of cases, determined, after much and expensive litigation, upon mere points of form, and without any reference to the merits. To what extent the act of the Session of 1848 can be considered as having remedied the evil it was directed against, it would yet, perhaps, be premature to pronounce; but it is gratifying to find Mr. Baines—whose position affords peculiar and abundant opportunities for obtaining information as to its practical operation—has been so satisfied of its success as to be induced to take upon himself the responsibility of extending the application of many of its provisions to other classes of

cases, the subject of Quarter Sessions procedure.

Although the principle of the two acts may be identical, it must not be supposed that the more recent act is a mere extension of the provisions of the Poor Removal Act. The 12 & 13 Vict. c. 45, confers new powers on the Court of Quarter Sessions, the exercise of which by other Courts has been found beneficial to the suitors, and which there is therefore good reason to hope will remove some of the objections to which an appeal to this tribunal was fairly open, and render it in many respects more efficient.

It will be observed, that the Sessions have now a general power to give costs in all cases of appeal, whether the appeal be entered or prosecuted, or not; and that such costs may be recovered, in the summary manner provided for the recovery of costs, upon an appeal against an order of conviction, under the 11 & 12 Vict. c. 43. (See sects. 5 & 6, *post*, pp. 379, 380). Very extensive powers of amendment are also conferred on the Courts of Quarter Session under this act. By section 10, they have the same power to amend indictments that was given to Courts of Oyer and Terminer by the act 11 & 12 Vict. c. 46, and have also authority to permit new recognizances to be entered into in cases where a former recognizance turns out to be defective, invalid, or insufficient, (sect. 8,) a provision the want of which has frequently interfered to defeat the ends of justice. The section which gives the Court of Quarter Sessions and the Court of Queen's Bench authority to amend orders or judgments upon appeal, or return to a certiorari, contains a restrictive provision, the expediency of which we are much inclined to doubt. If an objection be made to an order or judgment, upon account of any omission or mistake in

drawing it up, the order or judgment may be amended and adjudicated upon as if no such omission or mistake existed, but this can only be done where "it shall be shown to the satisfaction of the Court that sufficient grounds were in proof before the justice or justices making such order or giving such judgment, to have authorised the drawing up thereof free from the said omission or mistake." (See sect. 7.) According to our reading of this provision, it imposes upon the party applying for an amendment, the necessity of showing to the Court of Appeal the evidence taken before the justices below, an obligation always inconvenient, and sometimes impossible to fulfil. Where the objection is taken upon the return of a certiorari, it is true it cannot be allowed, unless it be specified in the rule for issuing the certiorari; but it is, to say the least, extremely inconvenient to call upon the Queen's Bench upon an application for an amendment, to determine, possibly upon contradictory affidavits, what grounds of proof were before the justices at Petty Sessions; and the difficulty is still greater when the objection is taken for the first time at the Quarter Sessions, and has not perhaps been specifically pointed at in the statement of the grounds of appeal. It seems, with submission, that the Quarter Sessions, and *a fortiori* the Queen's Bench, might have been safely entrusted with the power of amending the orders and judgments of justices, without fettering the exercise of their discretion by the provision above cited.

The power for the first time given to parties by this act, to agree upon a special case for the opinion of the Superior Courts, without the delay and expense of going to the Sessions previously, is one from which we anticipate that great practical benefit will arise, but surely the formal difficulties might have been got rid of, which induced the framer of the act to think it was necessary to except from this salutary provision "an order in bastardy, or a proceeding under or by virtue of any of the Statutes relating to her Majesty's Revenue of Excise or Customs, Stamps, Taxes, or Post-Office." Orders in bastardy are never likely to be appealed from, except upon disputed facts; but questions frequently arise under the Revenue Laws, which are peculiarly fitted for discussion in the form of a special case, and why that course of procedure should not be adopted, with the consent of the Attorney-General, as well as in other cases

where the Revenues of the Crown are not directly involved, is not quite obvious.

The provisions of the act, giving power, after notice of appeal, to refer the matter of appeal to arbitration in the same manner as may now be done when actions are brought in the Superior Courts, are of themselves not merely unobjectionable, but extremely useful. Complicated questions as to rating, involving matters of account, may frequently be referred at Sessions with great advantage to all parties; but what we should desire to see is some security beyond what is practically found to exist in the Superior Courts, that matters should not be referred *without* the consent of the parties or their attorneys; in other words, that the powers given by the act should not be abused, and that some limit should be put upon the expenses of arbitrations, which often prove as ruinous in practice to the successful suitor as to the defeated party.

The most important provision of the new act is section 18, which establishes a simple, effectual, and readily understood means of enforcing the orders of the Court of Quarter Sessions. The Court of Queen's Bench, or any judge of *that Court* sitting at chambers, either in Term or Vacation, is empowered to direct that the order of any Court of Quarter Sessions which has not been obeyed, should be removed into the Queen's Bench, and after such removal the order of Sessions may be enforced, with costs, precisely in the same manner as a rule of the Court of Queen's Bench. So long as it is deemed expedient to preserve the jurisdiction of the Court of Quarter Sessions, it is essential that its orders should be readily enforced; but in many cases heretofore, this could only be effected by the clumsy and expensive machinery of an indictment. As the section above cited only authorises a judge of the Court of Queen's Bench sitting at chambers to direct the removal of an order of the Court of Quarter Sessions, it may be questionable whether the Vacation Judge, if he should not also happen to be a judge of the Queen's Bench, will have authority, under the combined operation of this act and the 1 & 2 Vict. c. 45, s. 1, to make the necessary order for removal. Practically, it may be as desirable to enforce an order of Sessions during vacation as at any other period, and it would be matter of regret if the unnecessary insertion of the words "of that Court" in this section should be found hereafter to interfere in any degree with the exercise of

an authority which, we anticipate, will work very beneficially.

Those who are familiar with the practice at Sessions inform us, that great difficulty and uncertainty exist from the manner in which the 9th section of the Poor Removal Act, 11 & 12 Vict. c. 31, is framed,* and we are somewhat disappointed that in the act now under consideration, which is *in pari materia*, some attempt has not been made to remedy a defect generally complained of, and which promises to be a fruitful source of parochial litigation.

The positive merits of the act before us, however, are so obvious and indisputable, that its short comings may be fairly overlooked, for it can scarcely fail to be regarded as a valuable improvement upon the existing system of Quarter Sessions Law.

An Act to amend the Procedure in Courts of General and Quarter Sessions of the Peace in England and Wales, and for the better Advancement of Justice in Cases within the Jurisdiction of those Courts. [28th July, 1849.]

The act recites, that in cases of appeal to Courts of General or Quarter Sessions of the Peace, it is expedient that the law should be more uniform. It is therefore enacted—

1. *Uniformity of time for notice of appeal.*—*Notice to be in writing and signed.*—*Grounds to be stated.*—That in every case of appeal (except as hereinafter mentioned) to any Court of General or Quarter Sessions of the Peace, fourteen clear days' notice of appeal at least shall be given, and such shall be sufficient notice, any act or acts, or any rule or practice of any Court or Courts, to the contrary notwithstanding; and such notice of appeal shall be in writing, signed by the person or persons giving the same, or by his, her, or their attorney, on his, her, or their behalf, and the grounds of appeal shall be specified in every

such notice: Provided always, that it shall not be lawful for the appellant or appellants, on the trial of any such appeal, to go into or give evidence of any other ground of appeal besides those set forth in such notice.

2. *Act not to affect appeals against orders of removal, orders of bastardy, &c.*—That none of the provisions hereinbefore contained, relating to notices of appeal, shall be construed to affect or alter the law as to notice of appeal against a summary conviction, or against an order of removal, or against an order under any statute relating to pauper lunatics, or against an order in bastardy, or against any proceeding under or by virtue of any of the statutes relating to her Majesty's Revenue of Excise or Customs, Stamps, Taxes, or Post-Office, but the law with regard to notices of all such appeals shall be deemed and taken to be the same as if the provisions hereinbefore contained had not been enacted.

3. *Defects in stating grounds of appeal.*—*Amendment.*—That upon the hearing of any appeal to any Court of General or Quarter Sessions of the Peace, no objection on account of any defect in the form of setting forth any ground of appeal shall be allowed, and no objection to the reception of legal evidence offered in support of any ground of appeal shall prevail, unless the Court shall be of opinion that such ground of appeal is so imperfectly or incorrectly set forth as to be insufficient to enable the party receiving the same to inquire into the subject of such statement, and to prepare for trial: Provided always, that in all cases where the Court shall be of opinion that any objection to any ground of appeal, or to the reception of evidence in support thereof, ought to prevail, it shall be lawful for such Court, if it shall so think fit, to cause any such ground of appeal to be forthwith amended by some officer of the Court, or otherwise, on such terms as to payment of costs to the other party, or postponing the trial to another day in the same Sessions or to the next subsequent Sessions, or both payment of costs and postponement, as to such Court shall appear just and reasonable.

4. *Frivolous grounds of appeal.*—That if in any notice of appeal the appellant shall have included any ground of appeal which shall in the opinion of the Court be frivolous or vexatious, such appellant shall be liable, if the Court shall so think fit, to pay the whole or any part of the costs incurred by the respondent in disputing any such ground of appeal, such costs to be recoverable in the manner hereinafter directed as to the other costs incurred by reason of such appeal.

5. *Sessions to have a general power to give costs in all cases of appeal.* 11 & 12 Vict. c. 43.—That upon any appeal to any Court of General or Quarter Sessions of the Peace the Court before whom the same shall be brought may, if it think fit, order and direct the party or parties against whom the same shall be decided to pay to the other party or parties such costs and charges as may to such Court appear

* The section is in these words:—"That no appeal shall be allowed against any order of removal, if notice of such appeal be not given as required by law, within the space of twenty-one days after the notice of chargeability and statement of the grounds of removal shall have been sent by the overseers or guardians of the removing parish to the overseers or guardians of the parish to which such order shall be directed; unless within such period of twenty-one days, a copy of the depositions shall have been applied for as aforesaid, by the last-mentioned overseers or guardians, in which case a further period of fourteen days, after the sending of such copy, shall be allowed for the giving of such notice of appeal, but in such case no poor person shall be removed under such order of removal, until the expiration of such further period of fourteen days."

just and reasonable, such costs to be recoverable in the manner provided for the recovery of costs upon an appeal against an order or conviction by an act passed in the 11 & 12 Vict. c. 43, intituled "An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to summary Convictions and Orders."

6. *Fruitless appeals*.—That any Court of General or Quarter Sessions of the Peace, upon proof of notice of any appeal to the same Court having been given to the party or parties entitled to receive the same, though such appeal was not afterwards prosecuted or entered, may, if it so think fit, at the same sessions for which such notice was given, order to the party or parties receiving the same such costs and charges as by the said Court shall be thought reasonable and just to be paid by the party or parties giving such notice, such costs to be recoverable in the manner last aforesaid.

7. *Amendment of orders or judgments of justices on appeal or return to certiorari. Rule for certiorari to state objections*.—And whereas in many cases, where justices of the peace are by law empowered to make orders or to give judgments, great expense and frequent failures of justice have been occasioned by reason that such orders or judgments have, on appeal to the General or Quarter Sessions of the Peace, or on removal by certiorari into the Court of Queen's Bench, been quashed or set aside upon exceptions or objections to the form of the order or judgment, irrespective of the truth or merits of the matters in question: For remedy thereof be it enacted, That if upon the trial of any appeal to any Court of General or Quarter Sessions of the Peace against any order or judgment made or given by any justice or justices of the peace, or if upon the return to any writ of certiorari any objection shall be made on account of any omission or mistake in the drawing up of such order or judgment, and it shall be shown to the satisfaction of the Court that sufficient grounds were in proof before the justice or justices making such order or giving such judgment to have authorized the drawing up thereof free from the said omission or mistake, it shall be lawful for the Court, upon such terms as to payment of costs as it shall think fit, to amend such order or judgment, and to adjudicate thereupon as if no such omission or mistake had existed: Provided always, that no objection on account of any omission or mistake in any such order or judgment brought up upon a return to a writ of certiorari shall be allowed unless such omission or mistake shall have been specified in the rule for issuing such certiorari.

8. *Amendment of recognizances*.—And whereas the statutes giving a right of appeal against orders or summary convictions frequently require a recognizance or recognizances to be entered into as a condition of such an appeal, and appellants are liable to be prevented from trying their appeals upon the merits, in consequence of imperfections in the taking of such

recognizances: Be it enacted, that where any recognizance or recognizances which shall have been entered into within the time by law required before any justice or justices for the purpose of complying with any such condition of appeal shall appear to the Court before which such appeal is brought to have been insufficiently entered into, or to be otherwise defective or invalid, it shall be lawful for such Court, if it shall so think fit, to permit the substitution of a new and sufficient recognizance or new and sufficient recognizances to be entered into before such Court in the place of such insufficient, defective, or invalid recognizance or recognizances, and for that purpose to allow such time, and make such examination, and impose such terms as to payment of costs to the respondent or respondents, as to such Court shall appear just and reasonable; and such substituted recognizance or recognizances shall be as valid and effectual to all intents and purposes as if the same had been duly entered into at an earlier time or time as required by any statute or statutes for that purpose.

9. *Decisions of sessions when final*.—That the decisions of the Court of General or Quarter Sessions of the Peace upon the hearing of any appeal, as to the sufficiency of the statement of any ground or grounds of appeal, and as to the amending or refusing to amend any order or judgment of a justice or justices appealed against, or the statement of any ground or grounds of appeal, and as to the substitution of any new recognizance or recognizances as aforesaid, shall be final, and shall not be liable to be reviewed in any Court, by means of a writ of certiorari or mandamus, or otherwise.

10. *Amendment of indictment*. 11 & 12 Vict. c. 46.—That every Court of General or Quarter Sessions of the Peace, on the trial of any offence within its jurisdiction, whenever any variance or variances shall appear between any recital or setting forth thereof in the indictment, shall have the same power in all respects to cause the indictment to be amended which is given to Courts of Oyer and Terminer or general gaol delivery with regard to offences tried before such last-mentioned Courts by virtue of an act of the 11 & 12 Vict. c. 46, intituled "An Act for the Removal of Defects in the Administration of Criminal Justice;" and after such amendment the trial shall proceed in the same manner in all respects, both with regard to the liability of witnesses to be indicted for perjury and otherwise as if no such variance or variances had appeared.

11. *Power to state a special case without going to the sessions previously*.—That at any time after notice given of appeal to any Court of General or Quarter Sessions of the Peace against any judgment, order, rate, or other matter, (except an order in hasty, or a proceeding under or by virtue of any of the statutes relating to her Majesty's revenue of excise or customs, stamps, taxes, or post-office,) for which the remedy is by such appeal, it shall be lawful for the parties, by consent, and by order of any judge of one of the Superior Courts of

Common Law at Westminster, to state the facts of the case in the form of a special case for the opinion of such Superior Court, and to agree that a judgment in conformity with the decision of such Court, and for such costs as such Court shall adjudge, may be entered on motion by either party at the sessions next or next but one after such decision shall have been given; and such judgment shall and may be entered accordingly, and shall be of the same effect in all respects as if the same had been given by the Court of General or Quarter Sessions upon an appeal duly entered and continued.

12. *References to arbitration.* 9 & 10 W. 3, c. 15.—And whereas by a statute passed in the 9 & 10 W. 3, c. 15, intituled "An Act for determining Differences by Arbitration," provision was made for rendering more effectual the awards of arbitrators in the case of controversies and disputes for which there is no other remedy but by personal action or by suit in equity: And whereas it is expedient in like manner to facilitate and render more effectual references to arbitration of controversies and disputes for which the remedy is by appeal to a Court of General or Quarter Sessions of the Peace: Be it enacted, That at any time after notice given of appeal to any Court of General or Quarter Sessions of the Peace against any order, rate, or other matter, (except a summary conviction, or an order in bastardy, or any proceeding under or by virtue of any of the statutes relating to her Majesty's revenue of excise or customs, stamps, taxes, or post-office,) for which the remedy is by such appeal, it shall be lawful for the parties, by themselves or their attorneys, and by order of a judge of her Majesty's Court of Queen's Bench, to submit the matter or matters of such appeal to the award or umpirage of any person or persons, and to agree that such submission should be made a rule of the said Court of Queen's Bench, and to insert such agreement in their submission or the condition of the bond or promise whereby they oblige themselves respectively to submit to the award or umpirage of such person or persons; and thereupon such and the like proceedings in all respects shall and may be taken with regard to submissions under this act, and to enforcing awards or umpirages thereupon, and to setting aside the same, as are authorized by the said act of King William the Third with regard to the cases therein provided for; and every award or umpirage duly made under this act shall be as binding and effectual to all intents as if the same had been a regular judgment of the said Court of General or Quarter Sessions, and shall and may, on the application of either party, be enrolled among the records of the said Court of Sessions.

13. *References by order of Court of Sessions.*—That it shall be lawful for the Court of General or Quarter Sessions of the Peace before which any appeal (except against a summary conviction, or an order in bastardy, or any proceeding under or by virtue of any of the statutes relating to her Majesty's revenues of excise or customs, stamps, taxes, or post-office,) shall be brought, to order, with consent of the parties or their attorneys, that the matter or matters of such appeal be referred to arbitration to such person or persons in such manner and on such terms as the said Court shall think reasonable and proper; and such order may be made a rule of the Court of Queen's Bench, on the application of either party; and the award of the arbitrator or arbitrators, or umpirage of the umpire, may, on motion by either party at the sessions next or next but one after such award or umpirage shall have been finally made and published, or after the decision of the Court of Queen's Bench on any motion for setting aside the same, be entered as the judgment of the Court of General or Quarter Sessions in the appeal, and shall be as binding and effectual to all intents as if given by the said Court: Provided always, that the Court of Queen's Bench may, if it think fit, on application within the term next after the making and publication of such award or umpirage, either refer the case back again to the same arbitrator, arbitrators, or umpire, or wholly set aside the award or umpirage already made, and may in the latter event order the Court of General or Quarter Sessions to enter continuances and hear the appeal.

14. *Where reference abortive, Queen's Bench may order sessions to hear the appeal.*—That if upon any reference to arbitration under this act it shall be made to appear to the Court of Queen's Bench that, either from the death of the arbitrator or arbitrators or umpire, or from any other cause, it has become impossible that an award or umpirage can be made, it shall be lawful for the said Court to order the Court of General or Quarter Sessions of the Peace to enter continuances and hear the appeal.

15. 3 & 4 W. 4, c. 42, to be applicable to references under this act. *Arbitrators to have power of amendment.*—That the several provisions relating to arbitrations contained in an act of the 3 & 4 Wm. 4, c. 42, intituled "An Act for the further Amendment of the Law and the better Advancement of Justice," shall be deemed and taken to be applicable to arbitrations under this act; and in every such arbitration the arbitrator or arbitrators or umpire shall have the same powers of amendment which the Court of General or Quarter Sessions of the Peace would have had on the trial of the appeal.

16. *Recognizances for prosecution and trial of appeal.*—That no recognizance entered into pursuant to any statute or statutes for the prosecution and trial of any appeal shall be deemed to be forfeited by such agreement as aforesaid for the statement of a special case without previously going to the Court of General or Quarter Session, or by any submission to arbitration under the provisions of this act.

16. 3 G. 4, c. 46. *Levy and recovery of fines, issues, and amerciaments.*—And whereas by an act passed in the 3 G. 4, c. 46, intituled "An Act for the more speedy Return and levying of Fines, Penalties, and Forfeitures and Recognizances estreated," provision is made for,

shall be brought, to order, with consent of the parties or their attorneys, that the matter or matters of such appeal be referred to arbitration to such person or persons in such manner and on such terms as the said Court shall think reasonable and proper; and such order may be made a rule of the Court of Queen's Bench, on the application of either party; and the award of the arbitrator or arbitrators, or umpirage of the umpire, may, on motion by either party at the sessions next or next but one after such award or umpirage shall have been finally made and published, or after the decision of the Court of Queen's Bench on any motion for setting aside the same, be entered as the judgment of the Court of General or Quarter Sessions in the appeal, and shall be as binding and effectual to all intents as if given by the said Court: Provided always, that the Court of Queen's Bench may, if it think fit, on application within the term next after the making and publication of such award or umpirage, either refer the case back again to the same arbitrator, arbitrators, or umpire, or wholly set aside the award or umpirage already made, and may in the latter event order the Court of General or Quarter Sessions to enter continuances and hear the appeal.

authorizing the levying and recovery of fines, issues, amerciaments, and forfeited recognizances set, imposed, lost, or forfeited by or before any justice or justices of the peace in England: And whereas it is expedient that the subsequent proceedings in such cases should be uniform: Be it enacted, That the proceedings subsequent to such authority given for so levying and recovering as aforesaid shall and may be the same in all respects in the case of such fines, issues, and amerciaments as are by the said act provided, permitted, and required in the case of such forfeited recognizances.

17. *Enforcing orders of sessions.*—That in all cases where any order shall be made by any Court of General or Quarter Sessions of the Peace it shall be lawful for the Court of Queen's Bench, or for any judge of that Court at chambers, either in term or vacation, upon the application of any person entitled to enforce such order, and upon the production of a copy of such order under the hand of the clerk of the peace or his deputy, and upon proof of refusal or neglect to obey such order, to order and direct such order of the Court of General or Quarter Sessions to be removed into the said Court of Queen's Bench, and thereupon such order shall be of the same force and effect, and may be enforced in the same manner, as a rule made by the said Court of Queen's Bench; and all the reasonable costs and charges attendant upon such application and removal shall be recoverable in like manner as if the same were part of such order.

19. Act not to extend to Scotland or Ireland.

20. Commencement of act. 1st November, 1849.

REMUNERATION OF THE PROFESSION.

Proceeding with the discussion of this subject,^a we revert to the last number of the *Law Review*. "Of all the topics which claim the attention of the Law Reformer, that of *remuneration*" (says the reviewer,)

is the most difficult, and looking at its effects on other matters, most important. It is a mere truism to say, that, if men work, they must also eat; that work cannot be done without agents and instruments; and that both must be created, trained, and maintained. The public must pay for its whistle. If they would have good laws, they must provide the means of making good laws; or, if they prefer the pleasure of litigation on the doubts to which bad laws must give rise, they can have their indulgence only upon the terms of maintaining courts and judges, and their officers, advocates, attorneys, and an array of legal

agents of all grades. If, moreover, they would avoid those feuds and quarrels which, even under the best laws, will take place, and yet prefer present ease and comfort to the sober duty of transacting their own affairs in a business-like manner, they must also pay for this luxury. In this world of work, no good thing comes without exertion continually and systematically applied, and somehow or other paid for."

The writer then proceeds to notice the bitter complaints which have been made of the Court of Chancery, as indeed he might have said of all Courts, by those who neglecting their affairs, at the proper season, dislike to pay the expense of adjusting differences which ought never to have arisen. Our countrymen have, in general, a very strong sense of justice, and some of our most economical reformers would willingly be very *liberal* in securing the due administration of justice; but it will scarcely be denied that the public lose sight of the advantage which results from settling questions of litigation "once and for ever." Hard it is, we admit, that the individual suitor should incur the expense of expounding doubtful and uncertain laws. The state ought in duty to defray the cost of judges, masters, registrars, clerks, and all official expenses;—leaving the unfortunate suitor to pay only his counsel, attorney and witnesses,—a sufficient guarantee against needless litigation. These disbursements, indeed, he will have almost always to defray, for though he has the *right* to conduct his own actions and suits without counsel or attorney, it is not only at all times difficult, and sometimes impossible, to do justice to his own case; but for the most part his private affairs will not permit him to bestow the time required for preparing and conducting a cause from the beginning to the end. It is obvious also, that if the parties were their own lawyers, the facts would not be duly investigated, the legal inferences would not be properly brought out, nor, consequently, could a just conclusion be drawn which might serve as a guide for similar cases.

It is, indeed, manifest, that lawyers are a necessary good or evil, and that it is impossible for laws to be executed without them. Even in the County Courts, in matters of a few pounds value, where the question is not merely *when* the money shall be paid, but *how much* if any, it will be found impracticable to proceed satisfactorily without legal assistance, and a class of practitioners in these Courts will at no distant time be formed,—whether for the benefit of the

^a See pp. 261, 348, *ante*, for recent articles on the same topic.

public, or the credit of the profession, will depend considerably on the amount of their remuneration. Without meaning to say that small emoluments will produce pettyfoggers, or that a poor attorney must be dishonest, we think the amount of skill, learning, and respectability which will be enlisted in that department of practice, will bear at least a general proportion to the honour and reward which may be conferred upon its practitioners.

Except in the instances in which a practitioner has the good fortune to obtain a considerable number of clients, he will never, we believe, be sufficiently remunerated. "The suitor" (as the law reviewer says) "cannot be expected, in estimating the cost of defending his freehold, value so much, or of recovering a debt of such an amount, to bear in mind how many years were expended (if haply they were expended) in poring over law books, in attending court and assizes, in hope, not brief but briefless, of the future,—expended in a costly education at school and at college, in hall, and in the waiting at Court, and which must be included, to a greater or less extent, in the reckoning,—if on the present footing we would have able and intelligent legal agents."

This summing up of the cost of legal education applies for the most part to the barrister. The outlay is not a whit the less in the case of the attorney. His education, short of going to college (though many now do so) is not, or ought not to be, less than that of the barrister. His stamp duties and premium are of larger amount. His clerkship for as long a time. The preparation for admission stricter. The expenses of his professional establishment much larger; his capital more extensive; and on the whole, therefore, his risks are quite as great both in the expenditure of time and money. These and other matters are not duly estimated by the public in considering the charges of the attorney. They look at the sum total, including fees of judges, officers, and counsel, and conclude that much more falls to the share of the attorney than he ever receives, without regard to his losses or the interest on his advances.

We have thus glanced at some of the topics involved in the important subject of professional remuneration. As many sources of emolument have been wholly withdrawn, or largely diminished by the operation of recent changes in the law, it becomes a serious question whether some compensation should not be afforded by a new or different mode of charge. There are two alterations

which might justly be made: 1st. The attorney who advances the money for the fees and disbursements in the progress of a cause, should be entitled to interest thereon. In some instances, we know that the interest would equal the professional charges. 2nd. In certain classes of cases he should be entitled to charge a per centage on the value of the property recovered or defended. This is not without precedent in some respects, as in mortgage and annuity transactions, in which an *ad valorem* procuration fee is afforded.

These hints are offered for consideration during the present leisure season of the legal year, and we shall be glad to hear the sentiments of our correspondents both in the country and in town.

SUBSTITUTES FOR THE CERTIFICATE DUTY.

WE have received several suggested substitutes for the Annual Certificate Duty, and feel bound to submit them to our readers. In our opinion a revision of the whole of the Stamp Laws ought to take place, and thereupon it would be easy to relieve the profession of this unjustifiable and grievous burthen. The great body of the public, in their small and numerous transactions, might be relieved, and the revenue suffer no diminution. We believe, indeed, that by a just arrangement of the *ad valorem* duties, the return would be much increased.

One of the following suggestions, it will be observed, is the revival of the stamp duty on warrants to prosecute. This would be objectionable as a "tax upon justice," whether paid by the suitor or his attorney; and it would not effect the object of equalizing the duty amongst the various classes of practitioners according to the amount of their business. The payment of 5s. in every action would be infinitely heavier on the practitioners in common law than the like sum on suits in equity, whilst those who practise chiefly in the profitable business of conveyancing would escape altogether.

We think that if the money produced by the Certificate Duty must still be raised, either a revision of the Stamp Laws ought to take place, or a tax be levied on *all* professions, whether learned or not. A small annual fee of 5s. or 10s. upon the registration of all persons engaged in professional pursuits, as distinct from traders and shopkeepers, would realize more than the sum required, and establish a useful record of

various classes of persons, who are at present nowhere legally enrolled: such as architects, engineers, surveyors, agents, brokers, and factors of various kinds, &c., &c.

There cannot be a doubt but this tax operates not only most oppressively but unequally, and therefore most unjustly, on the profession. Many beginners do not realize even 200*l.* a-year. I know some personally, who on an average of seven years, have not netted 50*l.* a-year, but the man whose profits are 200*l.* a-year pays as much as one that clears 2,000*l.*; whereas, according to the proportion, the latter ought to pay 120*l.*

200*l.* : 12*l.* :: 2,000*l.* = 120*l.*

Formerly it was incumbent on an attorney to file a warrant to prosecute on the commencement of every action, might not such a system be adopted to levy the amount of the disreputable war-tax? at all events it would more equally distribute the amount.

I feel assured also, that a more equitable distribution of the *ad valorem* stamps on deeds would realize more than the deficiency. Why should the small purchaser pay so much more stamp duty on his purchase than the wealthy Cressus, except to tax the industry of the poor and the saving man? And why should not higher incomes of, say above 2,000*l.* or 3,000*l.* a-year, pay a larger per centage towards the exigencies of the state upon a sliding scale?

AN ATTORNEY OF 45 YEARS.

SIR,—I wish your readers would turn their attention to a substitute for this abominable tax, under a conviction that if such could be pointed out to the Chancellor of the Exchequer, there would be a better prospect of the repeal of the impost. For instance, as the tax on useless dogs for the year, ending 5th April last, produced no less than 134,827*l.*, surely by a moderate increase of that tax, and an alteration in a few others, a substitute may be found. Indeed I do not see why that tax alone should not be doubled, and a duty imposed on the transfer of funded property.

A. B.

AMENDMENT OF THE LAW OF DIVORCE.

TO THE RIGHT HON. LORD BROUGHAM.

MY LORD,—The mercantile world is under no inconsiderable obligation to your Lordship, in regard to your exertions to amend the Bankrupt Laws, although I am strongly of opinion that the matter might with advantage have been carried farther.

The object of my now addressing your Lordship through this medium is, to call your attention as a Peer of Parliament to the Law of Divorce.

Every facility is given, on a case fairly made out, on the part of the husband to

effectuate his relief, and in some isolated cases, the wife may obtain as well a divorce *a vinculo matrimonii* as a *mens et thoro*, but surely, my Lord, it is but equitable that the wife in cases of gross misconduct of the husband, should be equally entitled to be relieved from a union with him.

At all events, I submit that the few cases in which a wife can, by the present practice of parliament, obtain a divorce might be advantageously extended, if not put upon a par with those in which the husband can obtain relief.

A SOLICITOR OF FORTY YEARS.

STAMPS ON MORTGAGES TO BUILDING SOCIETIES.

To the Editor of the Legal Observer.

SIR,—Allow me through your valuable journal, which is always open to suggestions for the improvement of the law, to draw the attention of the profession, and through them of the public, who are equally interested in the question, to the existing state of the law in reference to mortgages to building societies.

The original intention of these societies was to enable people in the very humble walks of life to become the owners of the houses in which they resided, which they could only do through some such machinery; and to facilitate that object mortgages to the societies were, according to the opinion now almost universally received, exempted from stamp duty.

The operations and objects of the societies have been, however, so materially increased and varied, that it appears to me to be highly objectionable that such an exemption should exist, both as regards the revenue, the public, and the profession.

Building societies are now made use of, not only by parties anxious to borrow, but also by parties anxious to invest money; and as a natural consequence of such extended operations, their loan transactions are not confined within the limits originally contemplated, but are extended, under certain rules, to almost any amount.

Now it appears to me to be a self-evident proposition, that a man borrowing 500*l.* of a society ought to pay a stamp duty just as much as if he borrowed the same sum of a private individual. It is an injury to the revenue that he should not do so; it is unfair towards the public, that they should be compelled either to borrow through such societies, or to pay considerably increased expenses for their leases; and it is very unfair towards the members of the profession, as by releasing mortgages to such societies from the payment of those stamp duties which must be paid on all other mortgages, it will tend materially to withdraw an important branch of business from offices unconnected with such societies.

I do not at all object to mortgages to a limit-

ed amount, for the benefit of parties purchasing the tenements in which they reside, being free from stamp duty; but I do certainly object to all mortgages to building societies, as at present constituted, and according to their present system of effecting loans, being so emptied.

P. F. G.

Bristol, August 30, 1849.

[A recent decision of the Court of Common Pleas, in *Walker v. Giles*, on this subject, will be found noticed at p. 222, *ante*. The report of that case was separately published by Mr. Scott, the able reporter, on account of its importance. It has not yet appeared in the "regular" reports, but will be found sufficiently detailed in the article referred to.—Ed.]

INCORPORATED LAW SOCIETY.

ANNUAL REPORT.

The following is the conclusion of the Report of the Council:—

"GENERAL AFFAIRS OF THE SOCIETY.

"Purchase of Houses.—The Contract for the Purchase of the several Houses in Chancery Lane, Bell Yard, and Pope's Head Court, on the South side of the Hall, which was reported and approved at the last Meeting, has been completed; and the property is now let at a rent of 400*l.* a-year, for a term of which two years are yet unexpired; and by which time the Society will probably be in a position to determine whether the further Building on the South side, to the extent at least of a corresponding Wing to that on the North, shall be proceeded with.

"New Building.—Soon after the completion of the Purchase, which enabled the Council to arrange their plan consistently with the ultimate design of the building, a Contract was entered into for the New Building on the North side, the larger part of which will be completed in a few weeks, and the whole during the ensuing Vacation.

"Lectures.—Mr. Samuel Miller having closed his able Course of Lectures on Equity and Bankruptcy, the thanks of the Council were returned to him, and Mr. Jebb was appointed to the vacant Lectureship.

"Mr. Maynard was invited to continue his course on Common Law and Criminal Law, and Mr. Nalder on Conveyancing."

"At the close of Mr. Warren's Lectures on the Moral, Social, and Professional Duties of Attorneys and Solicitors, the Council presented their cordial thanks to him; and being of opinion that the Lectures were calculated to maintain the station and character of the Profession, and especially to stimulate and benefit its younger members, by aiding and directing their studies of the Law, and promoting ho-

nourable practice, the Council expressed their hope that Mr. Warren would extend the benefit of the Lectures by an early publication of them. They are glad to say that this suggestion was adopted, and several copies of the publication were placed in the Library of the Society.

"Library.—The additions to the Library during the past year have been considerable, particularly in Parliamentary and other Works of Reference. Further progress has been made towards completing the collection of Private Acts; the Solicitors of many of the Railways and other Public Companies have presented copies of their Acts; and several valuable donations of Books have been received from authors and others. The total number of Volumes in the Library is now 9,462.

"The Catalogue of the Library, a work necessarily of considerable labour, has been prepared, and is partly in the hands of the printers.

"The Council deem it expedient to notice the repeated applications which are made for admission to the Library by persons not in the capacity of Clerks to Members. It was formerly at the discretion of the Council to admit Subscribers to the Library who attended the Lectures in the Hall, although not in the office of a Member; but by the last Charter such admissions are strictly confined to the Articled Clerks of Members, or those who, having served their Articles, are Clerks to Members, and not in practice on their own account.

"Alteration of Bye-Laws.—The Circular convening this Meeting contains a statement of the proposed Alterations in some of the Bye-Laws. One of these has been proposed by the Council as expedient for the good government of the Society, inasmuch as complaints are occasionally made against Members of the Society which it may be proper to investigate without delay, but which, under the present Bye-Law, No. 65, cannot be effectually done, except on the requisition of Three Members of the Society not being Members of the Council; and the Council therefore suggest that the 65th Bye-Law be altered, by enabling the Council, as well upon *their own Motion* as upon the Requisition of Three Members, to convene a Meeting for the purpose of excluding a Member: and a Resolution to that effect will be proposed.

"Election of Council.—The Members of the Council who go out of office in rotation this day have been named in the Circular convening the present Meeting, and, being proposed for re-election, and no other Members being nominated, they will be deemed and declared elected according to the 13th Bye-Law.

"Since the last Meeting, the Council have to regret the decease of Mr. Richard White, one of the earliest and most valuable Members of the original Committee of Management, and afterwards of the Council. They have also to announce that Mr. Robert Wheatley Lumley has withdrawn from the Council, in consequence of his frequent absence from town,

* Mr. Nalder having concluded his course on Conveyancing, Mr. E. K. Karlake, (the grandson of the celebrated Richard Preston,) has been appointed Lecturer for the next year, commencing in Michaelmas Term.

which prevented his attendance at the Board. The Members proposed in their stead are, Mr. Edward White of Great Marlborough Street, and Mr. Joseph Maynard of Coleman Street; and, no other Gentlemen being named, they will, also according to the Bye-Law, be deemed and declared elected.

“Number of Members.”—Thirty-four new Members have been elected during the year; and the number of Members at the present time, deducting deceased and retired Members, is, in Town, 1,049, and in the Country, 287; making in all, 1,336.

“Funds of the Society.”—The Receipts and Payments during the year, and the state of the Funds of the Society, will appear in the Auditors' Report.

“The Council here close the statement of the affairs of the Society, and of their proceedings, directed during the past year to the promotion (according to the terms of the Charter) of ‘professional improvement.’ This Report would extend to a most inconvenient length were the Council to enumerate all the various subjects which have been brought before them for consideration, whether as regards the interest of the Profession generally, or of the Public who may be injured by irregular Practitioners or by fraudulent or oppressive proceedings. They therefore abstain from further alluding to them, trusting that the Society will give the Council credit for their past exertions, and rely on their giving their best attention and consideration in future to whatever subjects, whether in Parliament or before the Courts, which may in any respect affect the rights, the character, or interests of the Profession.

(Signed) “B. AUSTEN, President.”

PROCEEDINGS AND RESOLUTIONS AT THE ANNUAL GENERAL MEETING.

Read the Circular convening the Meeting, and the Minutes of the last Annual and Special General Meeting of 29th November last.

Read the Annual Report of the Council.

Resolved,—That the Report of the Council be received and entered in the Minutes; and that such parts of the Report as the Council think fit be printed for the use of the Members.

The President stated the vacancies in the Offices of President, Vice-President, and in the Council and Auditors, and the names of the persons proposed to fill those vacancies.

Resolved,—That Samuel Amory, Thomas Clarke, Richard Harrison, Bryan Holme, Edward Lawford, Thomas Metcalfe, Charles Ranken, and Charles Shadwell, be and they are hereby deemed and declared to be elected members of the Council, in lieu of those who go out of office by rotation.

That Edward White be and he is hereby deemed and declared to be elected a Member of the Council, in lieu of Richard White, deceased.

That Joseph Maynard be and he is hereby deemed and declared to be elected a Member of the Council, in lieu of Robert Wheatley Lumley, resigned.

That Thomas Clarke be and he is hereby deemed and declared to be elected President of the Society.

That Richard Harrison be and he is hereby deemed and declared to be elected Vice-President of the Society.

That Charles Thelwell Abbott, James Arderton, and Richard Baynes Armstrong be and they are hereby deemed and declared to be elected Auditors of the Society.

Resolved,—That the 65th Bye-Law—by which it is provided that no Order shall be made for the Exclusion of any Member of the Society unless Fifty Members, at least, shall be present at the Meeting to be convened for that purpose, and no Meeting shall be convened for such purpose except by the Council upon a requisition in writing, signed by three or more Members of the Society not being Members of the Council—be altered, by authorising the Council, *either upon their own motion* or upon a requisition in writing signed by three or more Members of the Society not being Members of the Council, to convene a General Meeting of the Society for the purpose of excluding any Member of the Society.

Resolved,—That the cordial thanks of the Meeting be presented to the President, Vice-President, and Council, for their great attention to the interests of the Society and their valuable services in behalf of the Profession.

NOTES OF THE CIRCUIT.

OBJECTIONS TO THE ABOLITION OF GRAND JURIES.

Mr. Baron Alderson, on delivering his charge to the Grand Jury, at Maidstone, on the 24th July, after expressing his gratification at seeing so many gentlemen in attendance to perform the duty of grand jurors, said, “that he hoped the day was far distant when such a spectacle would cease to be witnessed, and when criminal matters of importance would be disposed of without the intervention of a grand jury. He hoped they should never see the day when the system provided for the administration of justice in this kingdom, that of the Queen's representative visiting different parts of the country from time to time, and attended by the gentry of the country, should be abolished, as he believed that such a course would be likely to be injurious, not only to the people, but to the government. He believed that it was of the greatest importance in the administration of justice, that the different classes of society should not be separated from each other. He was ready to admit much might be done to improve the law, but at the same time it was equally clear, that so important a portion of their criminal judicature ought not to be abolished without grave consideration. Reform and innovation were not always synonymous. Every system was imperfect; but in a system which had existed for a length of time, people were too apt to look only at the evils that were apparent, and forget the evils that remained

behind, and which would, most likely, result from an alteration. He remembered to have been himself engaged in a case where a party was charged with a dreadful murder, and was acquitted, and, as many believed, wrongfully. The relatives of the deceased insisted upon their right to what was called the appeal of death, and they were met by a plea equally absurd, called the wager of battle. The absurdity of the judges sitting to decide such a question, of course speedily led to the abolition of the law, and he at the time coincided in the view taken of the propriety of that proceeding; but it turned out, according to his view of the matter, that it would have been much better to have amended that law than to have abolished it entirely. The next year there occurred what was called the Manchester massacre. There was great excitement upon political subjects, and several meetings were held at Manchester,

and at one of them the yeomanry were called in, and loss of life was the result. Indictments were preferred for murder against the yeomanry, and the grand jury of Lancashire threw out the bills, according to his opinion, most properly; but after this, indictments for assault were preferred, and the excitement was kept up for a year and more, which would not have been the case if the old Saxon right had been modified instead of having been altogether abolished. It therefore appeared to him, if the total abolition of grand juries was carried out, cases might occur in which the public would not place confidence in a public prosecutor, and that the administration of justice would suffer. At present they had the gentry of the country interposing between the Government and the people, and he, for one, hoped they might never see the day when grand juries would be abolished."—From *The Times*.

ATTORNEYS TO BE ADMITTED.

Michaelmas Term, 1849.

Queen's Bench.

Clerks' Names and Residences.

To whom Articled, Assigned, &c.

Armstrong, John Knight, Whitchurch	George Harper, Whitchurch
Abell, George Mutlow, 18, Grove-place, Brompton; 37, Harwood-street, Camden-town; and Devereux-court, Temple	Francis Higgins, Ledbury
Armishaw, Ralph, 18, Calthorpe-street; Rugeley; and New Boswell-court	John Armishaw, Rugeley
Atkinson, John William, 19, High-park-gate, South, Leeds; and New Boswell-court	John Atkinson, Leeds
Acton, Frederick, 6, Upper Eaton-street, Belgrave-square	George Vincent, King's-bench-walk
Addenbrooke, Thomas, 42, King-square, Goswell-road; and Walsall	Charles Pidcock, Worcester; Charles F. Darwall, Walsall
Arnold, Thomas, 3, Albert-terrace, Hampstead-road; King's-bench-walk; and Yeovil	Henry William Dickinson, Peole; Edwin Newman, Yeovil
Adams, Henry Cranston, 2, Bedford-street, Bedford-row; and Taunton	Messrs. Edwards, Beadon, and Henry Sweet, Taunton
Alder, George Ralph, 3, Cork-street, Burlington-gardens	Addison, Thos. Steavenson, Berwick-upon-Tweed
Allen, Thomas, 38, Edward-street, Hampstead-road; and Huddersfield	James Campey Laycock, Huddersfield
Bagslaw, John, jun., Manchester	John Bagslaw, Manchester
Baynam, Walter Lewis, 3, Gough-street-north, Grays-inn-road; and Daventry	Edward Singer Burton, Daventry
Bendle, Joseph, Carlisle	Robert Bendle, Carlisle
Bellairs, George Clarke, 11, South-crescent, Bedford-square; and Nottingham	Edmund Percy, Nottingham
Bromley, Edward, 31, Fitzroy-square	Joseph W. Bromley, South-square, Gray's-inn
Bradbury, Augustus, Bedford-house, Streatham	Benjamin Hardwick, Weavers'-hall, Basinghall-st.
Bubb, George Turner, 12, Seymour-place, New-road; and Everett-street, Russell-square	John Bubb, Cheltenham
Barroughs, Francis Cooper, 9, Great Turnstile, Lincoln's-inn; Weston-super-Mare; Red-lion-square	Henry Davies, Weston-super-Mare; Robert Davies Wells
Blake, Edward, 28, Great College-street, Camden-town	Charles Blake, London-wall
Blake, James Alexander, Wakefield	Joseph W. Westmorland, Wakefield
Bramwell, William Penney, 15, Manor-place, Walworth-road; and Holborn	Thomas Kennedy, Chancery-lane
Biggs, Thomas Clarkson, Pond-street, Hampstead	William Vizard, Lincoln's-inn-fields
Burnett, Robert Henry, Strangeways; St. Paul's-terrace, Great Randolph-street; Clevedon;	

- Paris; Brecknock-street; Exeter; Clifton; and Cloughton
- Beetholme, George Law, 16, Castle-street, Holborn
- Bartley, Henry John, 55, Westbourne-terrace
- Caddy, Harrington, 2, City-terrace, City-road; and Great Torrington
- Challinor, Joseph, Leek; and Argyle-street, St. Pancras
- Coare, Watson, 38, Everett-street, Russell-square; and Plymouth
- Charrington, Alfred Philip, Upper Clepton
- Cleveland, Henry, 33, Gower-place, Euston-sqr.; and Thorpe
- Carlisle, William Thomas, 32, Church-road, De Beauvoir-square, West Hackney
- Cox, Jechonias, Bridgnorth
- Clark, Joseph, 28, Finsbury-place
- Cart, George, 2, Adelaide-road, Haverstock-hill
- Clarke, Frederic Fuhrmann, 53, Upper Bedford-place, Russell-square
- Cox, Henry, Bedford-row, Clapham-rise, and West Brixton
- Cathcart, Robert James, Chepstow; and Coleford
- Crosley, Alexander, The Grove, Camberwell
- Cattell, Christopher William, 1, Brunswick-row, Queen-square
- Calthrop, Thomas Donnie, Morden-college, Blackheath
- Cates, Francis Nethersole, Darenth; and 23, Fenchurch-street
- Clark, Francis, 16, Norfolk-street, Strand; Winchester; and Duncan-terrace
- Collins, John, Newton-road, Bayswater
- Cox, Peter, jun., 1, Belgrave-street, South Pimlico
- Chatfield, Richard Edwin, 36, Arundel-street, Strand; Dover; and Grafton Street
- Cann, John, 12, Wilmot-street, Brunswick-square; Nottingham; and Albion-street
- Davies, Charles, jun., 21, Granville-square, Pentonville; Shirley; and University-street
- Davy, Robert Manning, Ringwood; and Norfolk-street, Strand
- Dutton, William Henry, 64, Judd-street, Brunswick-square
- Dewes, Charles Saunders, 8, Northampton-place; Canonbury-square; and Ashby-de-la-Zouch
- Eddowes, Thomas Storer, 23, Bloomsbury-street, Bedford-square; Derby; South-crescent; and Guildford-street
- Emmet, Charles Alexander, 10, Lansdowne-terrace, Notting-hill
- Forster, William, Halifax
- Fielding, George, Dover; Red-lion-square; and Featherstone-buildings
- Francis, William, 39, Manchester-street, Gray's-inn-road; and Edgbaston
- Ferrier, Frederick William, 3, New Milman-street, Guildford-street; and Great Yarmouth
- Faulkner, Charles Duffell, 15, Lower Belgrave-place, Pimlico; and Banbury
- Freeman, Henry William, 4, Foundling-terrace, Gray's-inn-road; and Cheltenham
- Fell, George, 1, Caroline-place, Queen's-shm, Brompton; and Aylesbury
- Farrar, Frederick Augustus, 12, Godliman-street, Doctors'-commons
- Gilbert, Thomas, 18, Grove-place, Brompton; King's Norton; Camden-street; and Harwood-street
- Gabb, Baker John, 54, Charlotte-street, Portland-place; Abergavenny; and Durham-place
- Goble, Binsted, 86, Newman-street, Oxford-street, and Portsea
- Thomas Higson, Manchester
- John Law Beetholme, Castle-street, Holborn
- Charles Pitt Bartley, Westbourne-terrace
- William Evan Price, Great Torrington
- William Challinor, Leek
- James Vallance, King's-bench-walk
- James Weston, Fenchurch-street
- M. Rackham, Norwich
- John Burley, New-square, Lincoln's-inn
- Thomas Gitton, Bridgnorth
- George Clark, Finsbury-place
- Robert Meggey, London-street
- Thomas Hamilton; Charles Few, jun., Henrietta-street; Charles H. Clarke, Chancery-lane
- Charles A. Dodd, Billiter-street
- William Roberts, Coleford
- James Phillips, Lawrence Pountney-lane
- John Orde Hall, Brunswick-row
- John S. Rymer, Whitehall-place
- George Cates, Fenchurch-street
- James Lampard, Winchester
- James Bowen May, 14, Queen-square, Bloomsbury
- Peter Cox, Beaminster; John S. Gregory, 1, Bedford-row
- Charles Chatfield, Austin-friars; Edward Knockers, Dover
- Abraham Cann, Nottingham; Francis J. Ridsdale, Gray's-inn
- Charles Davies, sen., Southampton; Abel Jenkins, 8, New-inn
- Robert Davy, Ringwood
- William Augustus Sadler Pemberton, Symond's-inn
- William Dewes, Ashby-de-la-Zouch
- Francis J. Jessop, Derby
- George Nelson Emmet, 14, Bloomsbury-square
- Edmund M. Wavell, Halifax
- Edward Elwin, Dover
- W. R. Cope, Birmingham; E. A. Chaplin, Gray's-inn-square
- Charles Cory, Great Yarmouth
- Benjamin Aplin, Banbury; Benjamin William Aplin, Banbury
- William Henry Gwianett, Cheltenham
- Henry Watson, Aylesbury
- Frederick Farrar, Godliman-street
- Thomas Colmore, Birmingham
- Baker Gabb, Abergavenny
- Charles Henry Binsted, Portsmouth; J. B. Loundes, New-inn

- Greene, John, Leeds Thomas Robinson, Leeds
Greenway, Richard, Pontypool T. G. Phillpotts, Newport; G. H. Williams, Pontypool
- Grieve, James Anselm, Addlestone and Wandsworth Frederick Pratt Barlow, New-bridge-street
Gauntlett, George Henry, 2, Elm-place, Queen's Elm, Brompton; and Barton-upon-Humber T. Shepherd, Beverley; W. Gruburn, Barton-upon-Humber
- Gwynn, John Crowther, 1, Orange-street, Bloomsbury-square; Thornbury; and Everett-street Edmund Lloyd, Thornbury
Games, William, Brecon Thomas Lawrence, Brecon
Giles, Joseph, Loughborough G. N. Emmet, Bloomsbury-square; Joseph Parker, Loughborough
- Goode, Henry Sale, 43, Howland-street, Fitzroy-square Philip Goode, Howland-street
- Gardner, Sladden, 7, Featherstone-buildings, Holborn; Remington-street; Great Ormond-street Robert Furley, Ashford
- Hockin, Henry Edward, 19, Harper-street, Red-lion-square; and Barnstaple Charles Carter, Barnstaple
- Hazard, William Martin, Harleston; and Hemingford-villas, Islington William Hazard, Harleston
- Hudson, Benjamin, Sheffield; and Hungerford-street Henry Vickers, Sheffield
Holroyde, John Bailey, 3, St. James's-place, New Cross; Rodney-street; and Halifax William F. Holroyde, Halifax; John Jaques, Ely-place
- Hall, Clarence, Manchester; and Westbourne-grove, West William Slater, Manchester
- Hensley, Thomas William, 3, Great James-street, Bedford-row Daniel James Lee, Bedford-row
Hawke, Henry, Sheffield William B. Fernell, Sheffield
- Hingstone, Richard, jun., 32, Wharton-street, Lloyd's-square; and Liskeard Edward Hoblyn Pedler, Liskeard
- Hamilton, Charles, jun., 8, Camden-square, Cambridge Edward Byrne, Southampton-buildings
Horrex, Theophilus, 11, Royal-crescent, Notting Hill William P. Pillars, Swaffham; Fred. Defaur, South-square, Gray's-inn
Horne, Edward Anthony, 6, Barnard's-inn, Holborn; and Camden-road-villas William S. Vardy, Finsbury-place; J. Meacher, Frederick-street
- Hollings, George, 34, Park-street, Grosvenor-square John Stuart, Field-court, Gray's-inn
- Hicks, William, 10, Lancaster-place, Strand; and Bedford-street Philip Longmore, Hertford
- Hunter, Rawdon, jun., 3, Upper Southampton-street, Pentonville; George-street, Easton-square Charles Cook, New-inn, Strand; R. B. Sanders, New-inn, Strand
Hook, Charles, 86, Gloucester-place, Kentish Town John Luke Wetten, Conduit-street
- Hawkes, Jonathan Blundell, 7, Halsey-terrace, Chelsea; and Clifton Francis Ridout Ward, Bristol
Hesp, William, jun., Welburn Luke Thompson, York; William Smith, jun., York
Hargrave, Edward, The Grove, Blackheath William Ghimes Kell, Bedford-row
Humphreys, Charles Octavius, 119, Newgate-street William C. Humphreys, Newgate-street
- Hart, Thomas Glover, 19, Keppel-street, Russell-square Thomas Hart, Reigate; Henry Batt, Dyer's-hall
- Hemming, Frederick Charles, 146, Strand; Bridport; and Greenwich James Templer, Bridport
Hargrove, James Sidney, York Luke Thompson, York
Harrison, Albert, 12, Clifford's-inn; and Everett-street Alexander Sharman, Bedford; J. Stevenson, King's road, Bedford-row
- Harris, Albert Domett, 64, Ely-place, Hoxton Old Town Frederick Carritt, Basinghall-street
- Jackson, Robert Edwin, 37, Frederick-street, Gray's-inn-road; Tavistock-place; Wellington James Groves, jun., 25, Charlotte-street, Bedford-square
- Jennings, Thomas Smith, 64, Judd-street, Brunswick-square Edward Jennings, 9, Chancery-lane
- Jacob, Frederick William, 4, Cloudeale-square, Islington; Huddersfield; Upper Clapton W. Jacob, Huddersfield; A. Van Sandau, King-street, Cheapside
- Ingleby, Clement Mansfield, 20, Queen's-terrace, Bayswater; and Spring-street, Paddington Clement Ingleby, Birmingham; George P. Wragge, Birmingham
- Jukes, Alfred Meredith, 72, Albert-street, Mornington-crescent; and Edgbaston George P. Wragge, Birmingham
- Jenkyne, Osborn Augustus, 29, Coppice-row, Clerkenwell; and Arthur-street William Sanger, Essex-court, Temple
- Kent, Francis Jackson, jun., Hampton Francis J. Kent, sen., Hampton

- Kingdon, Paul, Exeter; Northumberland-street; and Edward-street
 King, George Farquaharson, 3, Manor-villas, Upper Holloway
 King, Robert, 59, Arlington-street, Camden Town
 King, Richard Chapman, 45, Gower-street, Bedford-square; and Wellington
 Leech, Alexander Johnstone, Maidenstone-hill, Greenwich, and Deptford
 Last, Charles John, 19, Hanover-cottages, Park-road, Regent's-park; and Bedford
 Markby, Henry, 15, Windsor-terrace, Vauxhall-road, Pimlico; 38, Liverpool-street, Argyle-st.
 Mann, Henry John Marshall, Manchester
 Miller, John, Eastfield, Westbury-upon-Trym
 Miller, Francis, 45, Liverpool-street; 54, Spencer-street, Northampton-square
 Moser, William Paisson, 4, Boxworth-grove, Richmond-road, Islington
 Martin, Timpron, Everton, near Liverpool
 Moxon, Henry, 105, Ebury-street
 Miller, Charles Samuel, Brixton-hill
 Massey, Henry Eyre, 21, Lee-street, Kingsland-road; Cumming-street North
 Norwood, John Dobree, 65, King William-street; Ashford
 Nalder, George William, Long Ashton
 Pollard, Samuel, 46, Wharton-street, Lloyd-square; Rutland-street; Cumberland-terrace
 Pender, William Rous Tresilian, 29, Villiers-street, Strand; Falmouth
 Paterson, Robert, Rock-park, Chester; 10, Alfred-street, Islington
 Pearce, James, 16, Brunswick-parade, Barnsbury-road
 Pinniger, Broome, 20, New Ormond-street, Lamb's Conduit-street; 13, Warwick-court, Holborn
 Parker, Reginald Amphlett, 11, Canonbury-place, Islington
 Peake, Thomas Hugh, 7, Little Ormond-street; 17, Torrington-square
 Postans, Richard Broadhurst, 21, College-street, Islington; Hadleigh
 Pemel, Richard, 22, Baker-street, Lloyd-square; Stroud
 Plowright, John Stenson, 1, Southgate-terrace, Islington; Nottingham
 Pitman, William, jun., Newington-green
 Petgrave, Ezek. C. T. Johnson, 17, Cecil-street, Strand
 Pulman, William Thrush, 24, Surrey-street, Strand
 Page, George, King's Norton
 Park, James, 5, Lloyd-street; Lancaster; Castle-street, Falcon-square
 Rutter, William, Adelaide-road, Haverstock-hill
 Reynolds, John James, 107, New Bond-street; Hereford
 Roberts, Llewellyn Lloyd, 21, Mabledon-place
 Rowson, Alfred, 28, Everett-street, Russell-sq.
 Robinson, Charles Thomas, St. Neot's; New Millman-street; Harcourt-buildings
 Richard, Thomas Morton, 6, Diddington-place, Llangollen
 Reed, Paul Oct. Haythorne, 60, Bread-street, Bridgewater; Bennet-street
 Roberts, Harry Dawson, Fainswick; 12, Clifford's inn
 Richardson, Joseph, Liverpool
 Reed, George Barras, 2, Sidmouth-street, Newcastle-upon-Tyne
 S. D. Darbyshire, Manchester; Edward Hunt Roberts, Exeter
 F. Ouvry, 13, Tokenhouse-yard
 Leonard Hicks, Gray's inn-square
 John Frederick Isaacson, Norfolk-street, Strand
 Charles Calvert Corner, Mark-lane
 Alexander Sharman, Bedford
 John Crabtree, Halesworth
 James Gill, Manchester; Edward Bent, Manchester
 George Frederick Peters, Bristol; Henry Abbot, Bristol
 Henry John Mant, Bath; Frederick Maples, Frederick's-place
 Robert Moser, Kendal
 John Neal, Liverpool
 George Dunn, 2, Raymond-buildings
 Samuel Frederick Miller, Sussex-chambers, Dakt-street, St. James's
 Richard B. Andrews, Epping; Thomas Eaton, 10, Gray's inn-square
 William Crutenden, Ashford; Richard Daves, Angel-court
 Frank I. Nalder, Shepton Mallet; Alfred Henderson, Broad-street
 John Bassett Collins, Bodmin
 Francis Pender and William James Genn, Falmouth
 Henry Christian, Liverpool
 Charles Holmes Bower, Chancery-lane
 Broome Pinniger, Newbury; Charles Parsons, Temple-chambers
 Arthur Ryland, Birmingham; Robert Jackson, Bedford-row
 William Peake, 11, New Palace-yard
 Robert Marriott, Colchester; John Frederick Robinson, Hadleigh
 J. Gurney, Stroud; G. Wathen, Stroud; E. C. Little, Stroud
 George Moline Cowley, Nottingham
 Charles Fiddey, Paper-buildings
 Philip Richard Falkner, Newark-upon-Trent
 Edward Hemingway, Leeds
 George Augustus Page, Birmingham
 William Robinson, Lancaster; William Dunn, Lancaster
 Thomas Munnings Vickery, 25, Lincoln's inn-fields
 Thomas Hardwick, Hereford
 Arthur Troughton Roberts, Mold; John Hughes, Bangor
 Peter Nicholson, Warrington
 Octavius R. Wilkinson, St. Neots; W. M. Bennet, Raymond-buildings
 Charles Richards, Llangollen
 Henry Reed, Bridgewater
 William Mosson Kearns, Red-lion-square
 James Otley Watson, Liverpool
 William Edward Brockett, Newcastle-upon-Tyne

- Reed, Joseph James, 5, Gloucester-street, Queen-square
- Robinson, William, York
- Rickman, Philip, Tottenham
- Redge, William Joseph, 27, Crown-row, Mile End; Mitre-square, Aldgate; and Alfred-st.
- Smith, George Frederick, High-street, Hampstead; Maidstone
- Sills, William, 34, Mornington-crescent
- Senior, James Christopher, Twickenham; New Inn Strutton, Clement, 3, Compton-street East, Bloomsbury; Leicester
- Southall, Thomas, 30, Notting-hill-terrace
- Spofforth, Markham, Howden
- Smith, James Nimmo, 22, Everett-street, Russell-square; Birmingham
- Stillwell, James, New Windsor
- Shaw, Francis, 81, Hatton-garden; Derby
- Sprott, Walter, 7, Staple-inn; Yeovil
- Selby, Thomas Donaldson, 61, Spencer-street, St. John's-street-road; Alnwick
- Spofforth, Samuel, Kingston-upon-Hull
- Simon, Robert, Oswestry
- Sole, Henry, 2, Ampton-street, Gray's-inn-road; Devonport
- Sketchley, William, 5, Lamb's Conduit-street; Newark-upon-Trent
- Tozer, John Hellyar, 11, Caroline-street, Bedford-square; Teignmouth; Kenton-street
- Thomson, Benjamin James, Birkenhead
- Thompson, William, 4, Clarendon-villa, Edith-grove, New Brompton
- Tucker, Samuel Ward, 22, Surrey-street, Strand; Gerrard-street, Islington; Tokenhouse-yard
- Twigg, Francis, Burslem; Thames-parade, Pimlico; Gloucester-place, Chelsea
- Templer, Charles Copland, Leeds; Greenwich
- Tytherleigh, Robert, 5, Norfolk-street, Strand; Tavistock-place; Leigh-street
- Tindall, John, jun., Halton, near Runcorn
- Warner, Algernon, Blackheath
- Watson, Alfred, Shooter's-hill; 40, Mornington-place, Hampstead-road
- Wood, Charles Paul, 2, Red-lion-square; Chippenham
- Watson, William, Hedon
- Whitehead, Mark Henry, Hungerford
- Walter, Octavius Gardner, 41, Frederick-street, Gray's-inn-road; Oldbury-lodge, Somersetshire
- Wansey, Arthur Henry, 60, Lamb's Conduit-st.; Bristol
- Watts, William, 12, Wilmot-street, Russell-sq.; Vincent-terrace, Islington; Lamb's Conduit-st.
- Were, Anthony Berwick, 29, Frederick-street, Gray's-inn-road; Bath; and Farnival's-inn
- Wood, James, Radford
- Wing, Thomas Twining, Heath-street, Hampstead
- Westhorp, George, 5, New Millman-street; Brentwood
- Wilkinson, William John, 42, Little Britain; King's-road; Kingston-upon-Hull
- Woolmer, Shirley Nettleton, 15, Norfolk-street, Park-lane
- Wray, William, jun., 8, Harrington-square
- Waterhouse, Thomas, 1, Northport-street, and 50, Upper John-street, Hoxton
- Wigg, John Stone, 46, Lincoln's-inn-fields; 22, Mecklenburgh-square
- Anthony Guy, Lymington; George Robins, New-inn
- Richard Wilson, York; William Richardson, York
- George Augustus Crowder, 57, Coleman-street
- John Smith, Leman-street; Walter Charles Venning, Tokenhouse-yard
- Richard Hart, Maidstone
- John Arnold, Birmingham
- Charles James Abbott, New-inn
- Joseph Harris, Leicester
- William Laslett, Worcester
- George England, Howden
- Robert Gillam, Birmingham
- Charles Stuart Voules, New Windsor
- William Williamson, Derby
- Richard Raven, King's-bench-walk; Thomas Lyon, Yeovil
- Gerard Selby, Alnwick
- Joseph B. Burland, South Cave; Edward C. Bell, Hull
- Richard Jones Croxon, Oswestry
- Edward Sole, Devonport; Henry Tucker, jun., Plymouth
- John Whall, Worksop; Philip R. Falkner, Newark-upon-Trent
- John Chappell Tozer, Teignmouth
- John Whiteley, Liverpool
- Richard Weston Parr, Poole
- Philip Mathews Chitty, Shaftesbury
- William Edward Twigg, Burslem; Benjamin Price, Ironmonger-lane
- James Templer, Bridport; Henry Augustus Templer, Bridport
- Thomas Kennett, 2, Great Knight Rider-street
- Josiah Varey, Manchester and Runcorn
- Henry Masterman, Bucklersbury
- Robert Watson, 62, Moorgate-street
- Gabriel Goldney, Chippenham
- James Iveson, Hedon
- Henry Whitehead, Rochdale; George Whitehead Bury
- John Frederic Reeves, Taunton
- Henry Andrews Palmer, Bristol
- John Wadsworth, Nottingham
- Frederick Dowding, Bath
- Robert Leeson, Nottingham; Charles A. Welby, Nottingham
- Thomas Wing, Gray's-inn-square
- Francis Newcombe Landon, Brentwood
- John Wilkinson, Hull
- Meaburn Tatham, 24, Lincoln's-inn-fields
- Jackson Walton; David Erskine Forbes, 8, Warrford-court
- John Mason, Bilston
- George Herbert Kinderley, Lincoln's-inn

Wedlake, William Orme, 13, Camden-street, South Camden Town	Robert Cheere; Henry Bayley Wedlake, King's bench-walk
Whish, George Thomas, 37, Great Castle-street; Henrietta-street, Cavendish-square	Henry William Woodhouse, New-sq., Lincoln's-inn
Webster, Henry, 32, Harrington square; Sheffield; Euston-square; Euston-grove	James Wilson, Sheffield
Wells, William, 18, Upper Phillimore-place, Kensington	Robert Brotherson Upton, 20, Austin Friars
Ward, William, Stafford	Charles Bradford Passman, Stafford; William Bower, Stafford
Young, Henry Wells, 95, Guilford-street	Robert Young, Bettle; John Joseph Field, Guilford-street

Added to the List pursuant to Judge's Order.

Brewster, John Thompson, Nottingham	John Brewster, Nottingham
Krederer, Edward Joseph, 2, Sarah-place, Kingsland-road	Henry Swan, Great Knight Rider-street, Doctor's commons
Lloyd, Thomas, Newtown	Thomas Drew and Charles Thomas Woosam, Newtown
Rayson, Edward Knowles, 112, Brook-street, West-square	Mark Fothergill, Selby; George Hodgkinson, Thorne; Charles Bell, Bedford-row

RECENT DECISIONS IN THE SUPERIOR COURTS.

AND SHORT NOTES OF CASES.

Vice-Chancellor of England.

Moritt v. Walton. June 25, 1849.

CONFIRMATION OF MASTER'S REPORT.

Held, that the Court will not confirm the Master's report in a suit, if the object of the reference has not been answered, and therefore, where a reference was directed as to the proceedings in a suit, and whether they ought to be stayed or not, and no answer had been given thereto by the Master, the suit was directed to proceed, and a reference back to be made.

THIS suit was instituted in 1841, by certain persons claiming to be entitled to the Manor of Bowes, in Yorkshire, under a trust deed dated in 1682. A decree was made in 1843, referring it to the Master to ascertain the several interests of the parties, and a further reference as to the proceedings taken before the Enclosure Commissioners, in regard to the deduction of title, and whether it would be for the benefit of the parties to suspend the proceedings in the suit, and upon what terms. By the report, the Master found that it was necessary to obtain an act of parliament to get over the difficulties of working the suit, and that the proceedings before the Commissioners had proved abortive. The trustees under the deed then presented their petition for the confirmation of the Master's report, and several defendants presented a cross petition, praying that the suit might be proceeded with, and a reference back to the Master, as directed by the original decrees.

Stuart and Headlam for the trustees under the will; *Bethell and Smythe* for the cross petition; *Chandless and Wilcock* for the other parties.

The Vice-Chancellor said, that the Court could not confirm a report which had not

answered the object of the reference, and that if the parties could not come to some arrangement the suit must proceed as prayed by the cross petition.

Blundell v. Gladstone. June 29, 1849.

WILL.—CONSTRUCTION.—TRUST PROPERTY.

Upon construction of a will, held, that certain lands were not held by the testator in trust, and that they therefore passed under the general devise in the will.

HENRY BLUNDELL, by his will bearing date November, 1843, gave all and singular his manors, messuages, lands, tenements, and hereditaments, and also all and singular his real estate whatsoever and wheresoever, (except the hereditaments thereafter particularly directed,) of or to which he, or any person or persons in trust for him, was or were seized or entitled for any estate of freehold or inheritance in possession, reversion, remainder, or expectancy, to his trustees and executors, their heirs and assigns for ever, upon the trusts therein mentioned. The testator also devised his farms in Aughton and his farm in Lydiate to the Rev. Thomas Robinson, of Liverpool. The testator had two farms in Aughton: Molyneux Farm, which was his absolute property, and Shepherd's Farm, which had originally belonged to Lady Margaret Anderton, and had been dedicated for the maintenance of the Roman Catholic priest of Lydiate. Under these circumstances this suit had been instituted for the administration of the estate, and the Vice-Chancellor of England had held, that both farms passed under the general devise; but on appeal, Lord Chancellor Lyndhurst had referred it to the Master to ascertain what farms the testator had in Aughton, and whether

they were held on any trusts. By the report the Master found that Shepherd's Farm was a trust estate under a declaration of trust in 1793, to which the testator and his father were parties, and was, therefore, designated in the specific, and excluded from the general devise. A petition was therefore presented by the heirs-at-law of the testator to confirm the report, and a cross petition by the plaintiff, praying a declaration that the farms were not, nor was either of them held on trust, and that the Master might review his report.

Bethell and Campbell for the plaintiff contended, that as there was no deed produced by Lady Anderton, the devise as to Shepherd's Farm was void under the Statute of Frauds, and therefore passed under the general devise.

J. Parker and Fleming for the heirs-at-law; *Malins, Rolt, Hodgson and Witham* for other parties.

The Vice-Chancellor said, that there was no trust whatever attaching to the testator's estate of Shepherd's Farm and that the report of the Master, finding that these lands were held in trust, was erroneous.

Vice-Chancellor Knight Bruce.

Esparte London and Manchester Direct Independent Railway Company (Remington's line).
June 12, 1849.

JOINT-STOCK COMPANY.—SOLICITOR TO OFFICIAL MANAGER.—JURISDICTION OF MASTER.

Held, that the solicitors to the official managers of a joint-stock company under the 11 & 12 Vict. c. 45, must be appointed with the concurrence of both managers: Held also, that the Master has power to discharge a petitioner under that act from further attendance.

In this case the Master had approved the appointment of Messrs. J. and W. Galworthy, as solicitors to the official managers to the above company under a reference for winding up the company, according to the provisions of the 11 & 12 Vict. c. 45, and had also discharged the original petitioner from attendance upon him, but without directing any other party to attend in lieu thereof, except the above solicitors. The petitioner so discharged had appealed to the Lord Chancellor and the House of Lords from the order. Upon exceptions to the Master's report,

J. Russell, Bacon, W. T. S. Daniel, Stevens, J. H. Palmer and Glasse, appeared for the several parties.

The Vice-Chancellor held, that as the solicitors had not been appointed with the concurrence of both the official managers, the appointment was not valid, and that part of the order must be discharged. It was clearly within the Master's power to discharge the petitioner from further attendance, but as the circumstances had altered, there must be a reference back to review the order.

Sainter v. Ferguson. June 13, 1849.

INJUNCTION.—AGREEMENT NOT TO PRACTISE AS SURGEON.—DAMAGES.

*Where the plaintiff, a surgeon at Macclesfield, agreed to employ the defendant as an assistant to him, under certain stipulations, one of which was, that the defendant should not practise in that town or within seven miles thereof, an injunction was granted to restrain the defendant from so practising, although the plaintiff had proved the 500*l.* penalty which had been recovered in an action under the bankruptcy of the defendant; but the proof of the damages was to be expunged, and that for the costs allowed.*

JOSEPH DENDY SAINTER, who practised as a surgeon at Macclesfield, had engaged the defendant, **William Edward Ferguson**, as his assistant, under an agreement of the 12th April, 1848, at a salary of 80*l.* a year at first, to be afterwards raised to 100*l.*, and the defendant covenanted not to practise at any time in his own name or in the name or names of any other person or persons at Macclesfield or within seven miles thereof, under a penalty of 500*l.* The defendant having been dismissed from the plaintiff's employment, and an action having been brought against him for criminal conversation with the plaintiff's wife, a verdict was obtained therein. The plaintiff afterwards moved for an injunction to restrain the defendant, who had commenced to practise on his own account at Macclesfield, from so doing, but the motion was ordered to stand over until the plaintiff's right had been established at law. An action had been accordingly brought, and a verdict had been returned for the plaintiff with 500*l.* damages, and a rule to set aside the verdict, on the ground that the agreement was in restraint of trade, had been refused by the Court of Common Pleas. The defendant having subsequently become bankrupt, the costs under the action and the 500*l.* damages had been proved under the fiat. The motion for an injunction was now renewed, the legal right having been established.

Glasse in support of the motion; *Lewin*, contrâ, contended that, as the plaintiff had gone in under the bankruptcy, he could not enforce his claim in another Court.

The Vice-Chancellor said, that the plaintiff had the option of forbidding the defendant from practising at Macclesfield. The proof, however, of the damages was erroneous, and therefore this injunction would be granted without delay upon the proof being expunged. The plaintiff is entitled to the costs of the action, and may prove for them; and as the proof would have been admitted on application to the Court, the proof having been made is immaterial.

Esparte Moss, in re Davis. July 9, 1849.

BANKER'S LIEN ON SHARES DEPOSITED

WITH THEM FOR COSTS UNDER A BANKRUPTCY.

Held, that bankers who had advanced money to a bankrupt for the purchase of shares which were deposited with them as security, were entitled to their costs thereout, although no receipt or memorandum of the payment was made; it appearing that in such transactions none was necessary.

CERTAIN bankers had advanced to the bankrupt a sum of money paid by him upon the purchase of shares, which were deposited with them by way of security, and for which there was no memorandum or receipt. It appeared, however, that it was not the custom for any such memorandum or receipt to be given in such transactions. A petition having been presented by the bankers for their costs to be paid out of the security deposited in their hands,

Bacon for the petition; *Brodrick* contra.

The *Vice-Chancellor* held, that the petitioners were entitled to their costs, and ordered them to be paid out of the securities deposited with them.

Queen's Bench.

(Before the Four Judges.)

Smith v. Reginam. Jan. 24, 25, June 2, 1849.

INDICTMENT AT BOROUGH SESSIONS WHILE JUDGES SITTING IN ASSIZE.

Held, that a recorder of a borough can try a prisoner at the borough sessions, although the judges of assize are present in the same county.

THIS was a writ of error by a prisoner who had been convicted of felony by the Recorder of Manchester, and sentenced to be transported for 10 years. The ground of error assigned was that, as at the time of the conviction the judges of assize of oyer and terminer and general gaol delivery were sitting for the county at Liverpool, the Recorder had no authority to try the prisoner,—1st, because on the coming of a Superior Court the jurisdiction of an Inferior Court was suspended, on the principle that *in presentia majoris potestas cessat minoris*; and 2ndly, because the grant of a commission by the Crown determined all commissions of the same nature.

The Recorder of Manchester was appointed under the 5 & 6 W. 4, c. 76, (the Municipal Corporations' Amendment Act,) and was empowered, under section 103, to hold Quarter Sessions which were to be Courts of Record and to have cognizance of all matters cognizable by any Court of Quarter Sessions for counties.

Hodges appeared for the prisoner against the conviction, which was supported by *Welsby*.

Cur. ad. vult.

The Court (June 2) now delivered judgment, and held that the jurisdiction of the Sessions continued and was not suspended by the com-

missions to the judges of assize of oyer and terminer and general gaol delivery, as the judges of assize were not a Court of Error from the Court of Quarter Sessions, and as the commissions to the judges of assize were not similar to that of the commission of the peace,—the one being permanent and not assigned to deliver the gaol, and the other only temporary and did so assign. If the commissions of the peace were suspended, there must be new commissions issued after every assize, which was not necessary; but the Quarter Sessions should not be held during the gaol delivery. The trial of the plaintiff was therefore valid, and judgment must be affirmed.

Regina v. Mott. June 6, 1849.

SEALER OF CHANCELLOR OF DIOCESE OF LICHFIELD.—OFFICE HELD DURING GOOD BEHAVIOUR.

Held, that the sealer or seal-keeper of the Chancellor of the Diocese of Lichfield held that office during good behaviour and not during pleasure.

THE defendant, John Mott, made a return to a writ of mandamus, commanding him to deliver up the seal of office as sealer of the Chancellor of the Diocese of Lichfield to Sinclair Ching, who claimed to be entitled thereto, that the sealer was appointed by the Chancellor of the diocese for the time being, and that by immemorial usage he held the office during good behaviour and the continuance in office of the appointing Chancellor. It appeared that the defendant had been appointed by the Rev. Dr. Law, the Chancellor of the diocese, on the 15th February, 1821, to the above office, under letters patent, and that the prosecutor was appointed on 12th June, 1847. Issue was joined on the facts in the return, which was tried at the Staffordshire Summer Assizes, 1848, before *Rolfe, B.*, and a verdict was given for the Crown, subject to a special case, whether the office was held during pleasure or during good behaviour.

Alexander, Q. C., and *Keating, Q. C.*, for the Crown; *Sir F. Kelly* and *Cripps* for the defendant.

The Court said, that as there was no evidence of any of the defendant's predecessors in office having held their appointment during pleasure, but as, on the contrary, there was evidence that it had been held during good behaviour, there must be judgment for the defendant.

Regina v. Kendall and others. June 6, 1849.

NEW TRIAL.—INDICTMENT.—SURPRISE.

A rule for new trial on the ground principally of surprise—one of the defendants having been called as a witness—was refused on the ground that that evidence was rightly given and negatived other constructions sought to be placed on the transactions for which the defendant had been convicted.

with others of being connected with the sale of an East India Cadetship.

A RULE nisi for a new trial had been obtained on 24th May, on behalf of George Bickley, an attorney of this Court, and one of the defendants who had been tried at the Sittings after Hilary Term last, and convicted of being concerned in the sale of a cadetship in the East India Company's service. The grounds alleged were, that the defendant Bickley had been taken by surprise by the evidence given by one of the witnesses, William Moore, who was one of the defendants, and having pleaded guilty, was witness for the prosecution, and also that he merely acted as the attorney in the matter without any guilty knowledge or participation in the transaction.

The Attorney-General, Sir F. Thesiger, Sir F. Kelly, Wigram, Q. C., Clarkson, Peacock, and Forsyth, for the Crown against the rule; Shee, S. L., and Lush, in support of the rule.

The Court said, that it was not shown that the witnesses, whose names were on the back of the indictment and had not been called, could give any material evidence. As to the statement that the defendant had merely been engaged to negotiate this matter as a loan, he could have shown it on the trial. The testimony of Mr. Moore, although an accomplice, was such as negatived such a statement, and his evidence had been received by the jury as true. The rule must therefore be discharged.

Court at Exchequer.

Boosey v. Purday. April 26 and June 5, 1849.

COPYRIGHT. — FOREIGN AUTHOR. — ASSIGNEE.

Held, that a foreigner has no copyright in works published by him at common law or by statute, and that the assignee of a foreigner, although a British subject, stands in the same position as the assignor.

THIS was an action to recover damages from the defendant for the infringement of the plaintiff's copyright in 10 airs of the opera *La Sonnambula*. At the trial before Pollock, L. C. B., at the London Sittings after Trinity Term last, it appeared that Bellini, the composer, had in February, 1844, assigned his copyright according to the Austrian laws, to Ricordi of Milan, who in June, 1844, assigned them to the plaintiff in England. The plaintiff then registered the airs in pursuance of the International Copyright Act of 1842. Nine of the airs were published at Milan and Paris at nine o'clock in the forenoon of June 10, 1831, and about two hours later in London, and the remaining air in London in June, 1831, and at Milan in August, 1831. The Lord Chief Baron directed the jury that the plaintiff had not established an exclusive right to the copy-right in the nine airs, but had as to the 10th. Verdicts having been returned accordingly, cross rules were obtained to set aside the verdict on the ground of misdirection.

The Attorney-General and Crompton for

the defendant; Bovill, and Webster for the plaintiff.

Cur. ad. vult.

The Court said, that the case of *D'Almaine v. Boosey*, 1 Y. & C. 289, in which Lord Abinger, C. B., had held that foreign authors were entitled to copyright in their publications in England, and might enforce it, was not satisfactory. Such copyright must be acquired by statute as none existed at common law, and in looking at the preamble of the statute of Anne, it appeared that it was "to encourage learned men to compose and write useful books," for the improvement of the citizens, it must be presumed, of this country, either by birth or residence. A British subject who becomes the assignee of a foreigner, had no better title than the assignor, and had therefore no copyright, and the publishing abroad simultaneously made no difference in the question.

Insolvent Debtors' Court.

In re Irwin. Aug. 7, 1849.

INSOLVENT.—FRAUD.—REMAND.

Where an insolvent who was a certificated bankrupt had purchased a yacht under gross misrepresentations of his property, and it was sold without notice to the sellers contrary to agreement, he was remanded for 12 months, and for six months more for vexatiously defending an action on a bill of exchange.

THIS was an application on behalf of the insolvent, to be discharged from prison. It appeared that in June, 1846, the insolvent had agreed to purchase a yacht of Mr. Turnaley, a proctor of Dublin, for 325*l.*, for which amount an acceptance was given on a representation that the insolvent was entitled to certain property in Westmeath. The insolvent had, however, petitioned the Bankruptcy Court, and obtained a final order in January, 1844, and had also settled all his property present and future upon his wife, and the estates in Westmeath, as well as the yacht, were taken possession of by the trustees of the settlement. The yacht had been sold without notice to Mr. Turnaley. The insolvent had also put Mr. Saunderson, of the luggage department of the Great Western Railway, to an expense of 30*l.* by vexatiously defending an action brought on a bill.

Nicholls opposed the discharge on behalf of Messrs. Turnaley and Saunderson; Cooke, Sargood, and Dunn, in support of the petition.

The Commissioner said, that as the insolvent had vexatiously defended the action on the bill, Mr. Saunderson was entitled to a remand. As to the purchasing of the yacht, it appeared that at the time he was a protected bankrupt, having obtained a final order, and could have no expectation of paying the money. The insolvent would therefore be remanded for six calendar months, at the suit of Mr. Saunderson, and 12 at that of Mr. Turnaley, from the date of the vesting order.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Equity.

LAW of ATTORNEYS and SOLICITORS.

[For the previous Sections of this Series of the Digest in the present Volume, see,—

Privy Council :

Appeals, 88.

House of Lords :

Appeals, 171.

Courts of Bankruptcy, 211.

Courts of Equity :

Law of Costs, 234.

Law of Wills, 254.

Construction of Statutes, 271.

Law of Property and Conveyancing, 293.

Pleading, 334.

Principles of Equity, 352.

Practice, p. 375.]

ARTICLES OF CLERKSHIP.

Return of part of premium.—Where a clerk was articulated for five years to a solicitor who died in two years, *Held* that the clerk was entitled to recover a proportionate part of the premium out of the assets of the deceased attorney, and a reference ordered to ascertain the amount to be returned. *Hirst v. Tolson*, 38 L. O. 66.

CASH PAYMENTS.

Professional disbursements.—*Held*, that solicitors, in their bills of costs, should distinguish the specific cash payments which they are not liable *quâ* solicitors to pay, from disbursements made in the progress of a suit, or for which they are the parties primarily liable. *In re Remnant*. 38 L. O. 206.

COSTS OF ASSIGNEE ACTING AS SOLICITOR.

Held, that a solicitor, acting as assignee and solicitor to the fiat, is entitled to an allowance for labour done by his clerks, although not for his own services, but without profit. *Ex parte Newton, in re Newton : Moss, respondent*. 38 L. O. 147.

DISCOVERY.

An attorney held bound to discover when and to whom he parted with documents of title of his client, and in whose possession the same were. *Banner v. Jackson*, 1 De G. & S. 472.

Cases cited in the judgment : *Stanhope v. Knott*, 2 Swanst. 221, n.; *Kington v. Gale*, Rep. temp. Finch, 259.

INJUNCTION.

Proceeding for costs.—Injunction dissolved restraining attorneys from proceeding for costs, but execution not to issue on the judgment obtained, but to apply for leave to bring money into Court. *Lewis v. Elliot and others*, 38 L. O. 9.

LIABILITY FOR MISTAKE.

The Court will, upon a petition for other objects, order a decree or order to be amended

in respect of a mere clerical error, or slip; but a material error in a matter of account arising from a mis-statement in the Master's report, must be rectified by a reference back to the Master, and *semble*, if it have been occasioned by negligence of the solicitor, he may be charged with the expense of setting it right. *Cardinal v. Bower*, 38 L. O. 146.

LIEN.

1. After *A.* had employed Messrs. *B.* and *C.* as his solicitors, they took *D.* into partnership with them, and *A.* employed the new firm. In the course of the employment, papers belonging to him came into their possession.

Held, that *B.* and *C.* had no lien on the papers for costs which *A.* owed them, before they took *D.* into partnership. *In re Forsake*, 10 Sim. 121.

2. *Entering order.*—An order of the Court, duly passed, cannot be intercepted in its entry by reason of any lien of a solicitor for his costs, although he is no longer employed. *Clifford v. Turrell*, 36 L. O. 329.

3. *Production of documents.*—Where the Master made an order under the Winding-up Act of 1848, directing the solicitors to the company to produce all documents in their possession, but on which they claimed a lien for a bill of costs,—so much thereof as required such production was discharged. *In re Oxford and Worcester Extension and Chester Junction Rail. Company*, 38 L. O. 314.

PARTNERS.

1. *Joint solicitors to railway company.*—A reference was directed to the Master to take an account of the business separately done by joint solicitors to a railway company, where an issue as to the joint appointment was refused, and to allow 25 per cent. on such business. *Webster v. Bray*, 37 L. O. 357.

2. *New trial.*—A new trial granted on the ground of surprise in the admission of evidence. *M'Gregor v. Bainbridge*, 37 L. O. 493.

RAILWAY COSTS.

On the amalgamation of two railway companies, the local solicitors wrote to the London solicitor to the effect that he should have one-third of the profit in the business of the amalgamated companies. Previous to the amalgamation the profits were equally shared. *Held*, that this concession formed a sufficient consideration, and the letter was a valid contract. *Hook v. Sankey and another*, 38 L. O. 34.

See *Partners*, 1.

SUITORS' FUND.

Costs of solicitor.—*Held*, that the plaintiff in a foreclosure suit was to pay the costs of the solicitor to the Suitors' Fund, who had been appointed, at the plaintiff's request, guardian to appear and defend for infant defendants. *Harris v. Hamlyn*, 38 L. O. 251.

The Legal Observer,

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SATURDAY, SEPTEMBER 22, 1849.  
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LORD BROUGHAM'S NEW LETTER ON LAW-MAKING AND DIGESTING.

LORD Brougham is, unquestionably, one of the most remarkable men of the present age, alike for variety of talent and untiring energy. During the most busy part of the last Session, no peer of parliament was half so active as himself, whether in his legislative or judicial character; and no sooner is the Session closed than he sits down to write or dictate a pamphlet in the form of a letter addressed to Sir James Graham, "on the making and digesting of the law."*

After adverting to his former letters in 1843, upon the Amendment and Digest of the Law, with a passing mark of respect to Lord Lyndhurst and Sir Robert Peel, for their labours in the same vineyard, Lord Brougham sets forth his exertions for effecting a *Digest of the Criminal Law*. For this purpose he introduced a bill in 1844, of which he says Lord Lyndhurst highly approved; but considering the importance of the subject, and that from the nature of the thing, it must be mainly executed out of parliament, it was referred to the Criminal Law Commissioners. Their report and digest were presented in 1847; and in the next year Lord Brougham brought in a bill to carry the recommendation of the Commissioners into effect. The bill was referred to a Select Committee of the House of Lords, of which Lord Brougham was the chairman, and he addressed letters to all the judges of the three kingdoms, requesting their observations on the Digest. Waiting for their answers, the bill was postponed till the Session of 1849, at the beginning of

which it was again presented, and referred to the same Select Committee. Suggestions were received from the judges of Ireland and Scotland, but none from the English judges, and Lord Brougham infers, that they are satisfied with the Digest.

So far as to the criminal law itself. Next as to *Procedure* in criminal law;—the arduous task of digesting which has been performed by the Commissioners. It consists of 12 chapters, 47 sections, and 1,180 articles. Lord Brougham says, "he has examined it with an admiration which he believes will be shared by every lawyer who studies it. Coupled with the former Digest of *Crimes and Punishments*, it gives us a complete code of the criminal law, and enables the legislature of this country to escape the grave censure of not furnishing to the people the means of knowing what those laws are which it commands them under the heaviest penalties to obey."

Lord Brougham contemplates the extension of this plan of digesting the laws, to those relating to *Civil Rights*, so that there may be "one clear and intelligible text, to which the subject may resort, and by which the judge may decide;" but he is anxious and uneasy, because the House of Commons, in the last Session, took the liberty to refer the Bankrupt Law Consolidation Bill to a Select Committee, and to alter both in form and substance the Digest which the House of Lords had passed.

The bill, he says, consisted of two parts, —a Digest of the whole Bankrupt Law, and amendments of that law. The discussion in the Select Committee of the Lords was restricted, it appears, to the *changes* made in the law, and did not extend to the *digest*. If we read the letter aright, the noble lord is more offended with the alteration made in the Select Committee of the House of Commons in the shape and

* Published by Ridgway, Piccadilly, 1849, pp. 42.

orm of the bill, than in its substance. "No committee," he says, "can undertake with advantage the minute consideration of the terms in which provisions agreed upon as to their substance shall be couched. Confidence must of necessity be placed in the learning, skill, and diligence of those who have prepared the Digest." His lordship states, that "a most able and experienced officer of the Bankruptcy Court, for above 13 years daily conversant with its practice, Mr. Miller, had prepared the original bill under his (Lord Brougham's) direction, and with whatever help he could give by his suggestions and advice, especially where any difficulties arose." The bill was referred to a Select Committee, who examined witnesses, both professional and mercantile; it was then postponed till the next Session, and in the mean time was submitted to the London Commissioners of Bankruptcy. It came back with their suggestions, and was reconsidered by the Lords' Committee, and in due time passed the Upper House.

This bill, or digest, or "pamphlet in a hundred pages," as Vice-Chancellor Knight Bruce designated it,^b was then sent to the House of Commons, and there,—instead of being adopted as a work of perfection,—was referred to a Select Committee. The principle of consolidating the bankrupt statutes into one act was adopted. Several important amendments, both in the law, in the jurisdiction of the courts, and in the mode of procedure were adopted. But numerous clauses relating to the creation of chief commissioner, sub-division courts of appeal, seniority of succession, increase of salaries, and other arrangements touching the dignity, emoluments, and constitution of the courts, were not approved either by the Government or Select Committee of the House of Commons.

Now on these topics it is manifest that the House of Commons had an equal right with the Lords to judge for themselves, and indeed had a peculiar duty to perform in re-

gard to the financial part of the subject. Let it be recollected also, that although this was not a Government measure, its law officers were bound to examine, not merely the general principle, but all its details and probable consequences; and it appears that they are not yet prepared to adopt Lord Brougham's plan of codification. We cannot now enter into the various objections to the proposed codifying of the English laws, and may refer our readers to Sir Walter Scott's remarks on the Code Napoleon, observing only that even if a code were practicable in revolutionary France, beginning all things as it were *de novo*, it does not follow that it would be successful in England. Even Lord Brougham himself prefers the name of "Digest" to "Code," and *digesting* to *codifying*. "And why? Because (he says) the word is more English and of more received use among us. And also, because when you only mean to consolidate, arrange, and systematize,—without altering,—'Digest' expressing that operation accurately, is preferable to 'Code,' which embraces a wider range, extending to new enactment."

The noble Lord amusingly notices the dislike of the Commons to innovation! He says, "Whether Code or Digest, the Committee were alarmed, and articles they would have none—it must be distributed into sections. Nay, Arabic numerals they would have none—all must be Roman." "The Roman numerals were restored to their pride of place—*article* was supplanted by *section*." These and other alterations in the bill his lordship views as "fatally obstructing the great work of Law Amendment, in its most important branch,—Digesting the existing Laws. If the proceedings of this Select Committee (says his lordship) are to form the precedent in future cases; if departing from the rational course pursued by their predecessors, by the Eldons, the Redesdales, the Tenterdens, the Lyndhursts, no credit is ever to be given, no confidence granted to learned and experienced men *employed by the state*, and consummately qualified to digest our laws, but each article is to be examined, each expression scrutinized, every word weighed in golden scales by both Houses of Parliament; then, I say nothing of the injury that may result to the work, but I speak with a reasonable consternation of the time which must necessarily be required for this process."

We have here to observe, that although the proposed Digest of the Criminal Law has been prepared by "learned and experi-

^b We rejoice in noticing the kind and complimentary manner in which Lord Brougham refers to the learned judge, notwithstanding his adverse and somewhat sarcastic testimony: "The pamphlet," he says, "has now become the law of the land, and the same excellent judge is now sitting in bankruptcy to administer it, and to know no other Bankrupt Law, unless indeed his contempt for codes shall make him resign his high office rather than submit to be governed by them, an event which I should, with the rest of the profession, deeply and justly lament."

enced men employed by the State ;"—the Bankruptcy Digest did not receive that advantage. With every possible respect for the London Bankruptcy Commissioners and for Mr. Miller, their able officer, we cannot wonder that the House of Commons and the Government thought proper to judge for themselves before they permitted the act to pass. We admit that the Law of Bankruptcy, affecting so largely our trade and commerce, is of great importance, and that the judges and officers who administer it, should receive all due honour and emolument ; but it may be fairly questioned whether their ministerial and official duties ought to be placed in so high a rank as the framers of the bill proposed. We apprehend that not a little of the vituperation with which the Commons and their Committee have been visited, has been owing to the rejection of the clauses bearing upon the personal interests of the bankruptcy staff of officers. "Our laws," says Lord Brougham, "are prepared by individuals or by boards in connexion with the government ; but there is no communication between those parties from whom the different bills proceed. Hence there is no guarantee whatever against the most manifest inconsistencies in their various provisions. But again, each party has one particular object in view, and his *bill is framed to obtain that object.*"

The consolidation or Digesting of the Bankrupt Law, and the increased remedies against fraudulent debtors, were excellent objects ; but suspicion was evidently raised, that along with these public purposes there were other ends to be attained, namely, the aggrandizement of certain individuals who had secured the favourable ear of Lord Brougham. Hence the bitterness with which the rejection of certain clauses have been viewed, the keenness with which the errors in the act are criticised, and its omissions condemned. These errors and omissions, whether ascribable to the original framers of the act, or those who suggested alterations, are pointed out with much minuteness, and to which we may hereafter advert. It is said, that "no less than 19 statutes are left out of the repealing schedule, each of which contains provisions touching bankruptcy. Consequently (it is contended) that "endless doubts will arise respecting the existence of those provisions after the new act comes into operation."

We cannot partake of this apprehension : the last enactment will of course prevail, just as, we presume, it would have prevailed

had the bill remained unamended as it came from the Lords' Committee, without any schedule of statutes wholly or partly repealed. It is, we conceive, a great advantage and practical convenience to know what former acts are expressly repealed and to which there will be no occasion hereafter to refer, except in regard to transactions prior to the new statute. We therefore think that the condemnation of the "repealing schedule" is not well-founded."

It is somewhat remarkable, that the letter, except by a brief reference to the necessity of improving the procedure of "Martial Tribunals," has been confined to Bankruptcy and Criminal Law. Neither the Law of Real Property, including a general Register of Deeds and Forms of Conveyance, nor the comprehensive and fruitful topic of Chancery Reform, both in jurisdiction and procedure, is in any respect noticed by the noble and learned Lord. Perhaps these and other subjects on which his lordship has from time to time spoken and written, will, ere long, form the materials of another "letter missive." These publications from so masterly a pen, are always interesting, as well to the public as the profession, and they serve to mark the restless footsteps of the lawreformers, and enable us to trace how far they have proceeded, and to descry whither they ultimately tend. We welcome therefore the present, and shall gladly pay our respects to the next "epistle general" of the great Apostle of Law Reform.

DECISIONS,

OF THE

SUPERIOR COURTS

UPON THE COUNTY COURTS ACT.

THE clauses introduced in the County Courts Amendment Act, by which it was proposed to interfere still further with the jurisdiction of the Superior Courts, and to throw upon a plaintiff, recovering a verdict, in one of the Superior Courts, for a sum not exceeding the amount recoverable in a County Court, the onus of proving that he could not have successfully prosecuted his claim in the inferior jurisdiction, were, as

* The act for consolidating and amending the Law of Attorneys has a similar schedule to that of the Bankruptcy Act, containing the Titles of Acts repealed, whether partly or wholly ; and that schedule has been found very useful and satisfactory.

our readers are already aware, and as we venture to think, wisely, rejected by the House of Commons. The result of that rejection is, that the right of the suitors in the Superior Courts to costs, generally, stands precisely as it did before the passing of the act 12 & 13 Vict. c. 101;^a the only class of suitors whose interests are affected by that act being attorneys and solicitors.

The questions determined by the Superior Courts upon the right to costs, and other portions of the act 9 & 10 Vict. c. 95, since the decisions were last reviewed in this publication,^b have not been numerous. As a considerable interval, however, must be expected to elapse before any fresh judgments are pronounced, the attention of our readers may now be conveniently recalled to the few recent cases involving any important principle of construction.

When the provisions of the County Courts' Act, which deprive a successful plaintiff of costs, were last considered in these pages, it was suggested that the language of the 129th section of the statute was inapplicable, where the defendant suffered judgment by default, and there was a mere assessment of damages, no verdict being found for the plaintiff. This point has been since expressly decided upon demurrer, after a long argument, by the Court of Common Pleas, in a case of *Reed v. Shrubsole*.^c That was an action of trespass for an assault, in which the defendant allowed judgment to go by default, and upon a writ of inquiry, before the Sheriff of Kent, the jury assessed the plaintiff's damages at 40*s*. The defendant entered a suggestion to deprive the plaintiff of costs, to which the plaintiff demurred, upon the ground that the 9 & 10 Vict. c. 95, s. 129, which provides that a plaintiff upon a verdict found for him for less than 5*l*. in an action of tort, shall recover such sum only and no costs, does not apply to a judgment by default and inquisition of damages upon a writ of inquiry. The argument turned very much on the effect of the proviso to the 129th section, giving the judge who tries the cause power to certify that the action was fit to be tried in the Superior Court, coupled with the decisions under which it has been held, that sheriffs and judges to whom causes are sent by writ of trial, have not the power to certify.^d If

the act was to be construed in the manner contended for by the defendant, it was said, that the defendant by his own act, as by suffering judgment by default, would escape the payment of costs, although the case might be fit to be tried in the Superior Court. A majority of the judges decided in favour of the plaintiff, upon the simple ground, that the framers of the 129th section, appeared to have overlooked the case of a judgment by default, and a subsequent assessment of damages for a less sum than 5*l*. upon a writ of inquiry. The Court, however, was not unanimous, as Mr. Justice Cresswell declined to concur in the judgment; and the point cannot therefore be said to be settled until it is ascertained that one of the other Courts of Law adopts the construction put upon this section of the act by the Court of Common Pleas.

It may now be considered as the established practice, that a defendant applying for leave to enter a suggestion under the 129th section of the County Courts Act, is not only bound by affidavit to bring himself within the terms of that section, but also to negative the exceptions contained in the 128th section. It is not enough for the defendant to show that the plaintiff *might* have sued in the County Court, he must show affirmatively that the plaintiff was *bound* to resort to the inferior jurisdiction.^e Having done this, however, the defendant is held to have made out a sufficient *prima facie* case, which entitles him to have a suggestion entered on the record, which may afterwards be traversed or demurred to, so as to raise any question necessary to be tried by a jury or decided by the Court.^f

The question decided some months since by the Court of Queen's Bench, in *Ex parte Clipperton*,^g as to the right of an attorney to recover from his own client a sum beyond 15*s*., for services rendered in respect of a plaint depending in the County Court, has been again mooted in the Court of Common Pleas in a case of *Keighley v. Gardiner*.^h The plaintiff in that case delivered a bill amounting to 20*l*. 19*s*. 2*d*.,

Claridge v. Smith, 4 Dowl. N. C. 583. See also *Chapman v. Oppenheim*, *ante*, p. 135.

^a *Bailey v. Robson*, 5 Com. B. 934, *Leg. Obs.*, vol. 36, p. 168; *Mathew v. Broughall*, 5 Com. B. 937.

^b *Hayter v. Fish*, *Leg. Obs.*, v. 37, p. 112; *Butler v. Corney*, 2 Exch. 474, *Leg. Obs.* vol. 37, p. 74.

^c *Leg. Obs.*, vol. 36, pp. 53, 238.

^d *Ante*, p. 110.

^a Printed *ante*, p. 280.

^b *Leg. Obs.*, vol. 36, p. 499.

^c Reported 18 Law Jour. 225, C. P.; and *ante*, p. 53.

^d *Wardroper v. Richardson*, 1 Ad. & El. 75;

for services and expenses incurred respecting a claim which was prosecuted in the County Court at Edmonton, and the Master, under the 91st section of the 9 & 10 Vict. c. 95, considered himself bound to tax off the whole of the bill, except 15s. The Court granted a rule to show cause why the Master should not review his taxation. The rule was argued in Trinity Term, but no judgment has yet been pronounced upon it.

The Court of Queen's Bench, before rising for the Long Vacation, solemnly decided the important question raised in the case of *Mr. Parham*,¹ the judge of the County Court of Worcestershire, namely, whether under the provisions of the County Courts Act, the same individual could be lawfully appointed judge of more than one district for holding County Courts. The validity of the appointment has been established by the judgment pronounced in this case, and it is quite clear that an opposite decision would have been productive of the most inconvenient consequences, as a majority of the County Court judges have been appointed to a Circuit containing several districts, in the same manner as *Mr. Parham* was appointed.

The cases decided upon the construction of the 67th section of the County Courts Act, as to the privilege of an attorney to sue in a Superior Court for the recovery of a debt, which might have been recovered in a County Court, have become of little importance since the legislature has thought fit, by the act 12 & 13 Vict. c. 101, s. 18, as our readers are aware, expressly to abolish this ancient privilege.

NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

[The Statutes of this Session printed in the last and the present Volumes, are as follow :—

- Buckingham Assizes, vol. 37, p. 408.
- Inclosure of Commons, vol. 37, p. 408.
- Appointment of Overseers of Poor, vol. 37, p. 448.
- Law of Larceny Amendment, vol. 37, p. 471.
- Annual Indemnity, vol. 37, p. 489.
- Petty Sessions in Counties and Boroughs, p. 78, *ante*.
- Maintenance of Poor out of Workhouses, p. 101, *ante*.
- Costs of Distraining for Highway Rates, p. 127, *ante*.
- Defective Powers of Leasing, p. 187.
- Sheriff of Westmoreland, p. 220, *ante*.
- Passengers' Regulation, p. 239.

¹ See *post*, p. 410.

Relief of Poor in Cities and Boroughs, p. 259.

Small Debts, p. 280.

Bankruptcy Law Consolidation Act, pp. 297, 317.

Joint-Stock Companies Winding-up Amendment Act, 1849, p. 340.

Inclosure of Commons Extension, p. 361.

Quarter Sessions Courts Procedure Act, p. 379.]

SEQUESTRATORS' REMEDIES.

12 & 13 VICT. c. 67.

By the first section of this act, sequestrators are enabled to sue in their own names for tithes, rent-charges, tithe composition, or other payment in lieu of tithe, due to the incumbent of the benefice sequestered. But such sequestrators are not authorized to bring actions, except against the incumbent, which might not lawfully have been brought by him. And sequestrators may require indemnity from the creditors, at whose suit the sequestration shall have issued.

By the second section all payments made under the act are to be deemed profits of the benefice.

The following is the act :

An Act to extend the Remedies of Sequestrators of Ecclesiastical Benefices. [28th July, 1849.]

1. That from and after the passing of this act every sequestrator who shall then have been or who shall thereafter be appointed by a bishop or other ordinary, or by any competent Ecclesiastical Court, to levy, collect, gather, or receive the profits of any ecclesiastical benefice, by virtue or in pursuance of any writ of *fieri facias de bonis ecclesiasticis*, *Levari facias de bonis ecclesiasticis*, *sequestrari facias*, or of any sequestration made or issued by authority of law, may and is hereby authorized and empowered, from time to time, to bring and prosecute any action at law or suit in equity, or levy any distress, or take any other proceeding in his own name as the sequestrator of such benefice, without further description, for the recovery of any tithes, tithe rent-charge, tithe composition or substitution, obvention, pension, portion, or any other payment for or in the nature or in lieu of tithe, or any other rent or annual sum, dues, or fees payable to the incumbent of such benefice, or of any messuages, lands, tenements, or hereditaments subject to such sequestration, or of any rent due or payment reserved or made payable to the incumbent of such benefice under any lease or covenant or agreement to let any such messuages, lands, tenements, or hereditaments, tithes, tithe rent-charge, or other parcel of the benefice to which the appointment of such sequestrator relates : Provided always, that nothing herein contained shall be construed to empower the sequestrator of any benefice to bring, prosecute, levy, or take any action, suit, distress, or other pro-

ceeding by virtue of this act, except against the incumbent of such benefice, which might not lawfully have been brought, prosecuted, levied, or taken by the incumbent of such benefice if such benefice had not been under sequestration: Provided also, that no sequestrator appointed under a sequestration issued at the suit or instance of any creditor shall be bound to commence, prosecute, levy, or take any action, suit, distress, or other proceeding as aforesaid under the provisions of this act, unless and until security, to be approved by such sequestrator, shall be given by the creditor at whose suit or instance such sequestration shall have been issued, for indemnifying such sequestrator and the bishop or other ordinary or other Ecclesiastical Court from all costs, charges, and expenses incurred or to be incurred in the commencement, prosecution, or conduct of such action, suit, or distress, or other proceeding to which he or they respectively may become liable in consequence thereof, the expense of such security to be deducted or allowed out of any money, to be received by the creditor by virtue of such action, suit, distress, or other proceeding.

2. That the payment or render to such sequestrator lawfully entitled, with or without suit, by the party thereunto liable, of any such tithe, tithe rent-charge, tithe composition or substitution, rent, dues, fees, or payment, shall effectually discharge the party making the same from all liability to the incumbent of such benefice in respect thereof, and that such sequestrator shall and may apply and shall account for the monies received or arising under or by virtue of any such render, payment, or recovery in like manner as other goods and profits of the benefice liable to sequestration: Provided always, that nothing herein contained shall make any alteration in the law respecting the application of the money received by a sequestrator, or the security to be given by him for his duly accounting for the same.

FURTHER RELIEF OF TRUSTEES.

12 & 13 VICT. c. 74.

Difficulties having arisen in the transfer of securities vested in trustees in certain cases under the provisions of the 10 & 11 Vict. c. 96, this act has been passed for carrying into effect the objects of that act.

By the first section the Court of Chancery may, on the application of a majority of the trustees, order payment or transfer of trust monies, stocks, or securities into the Court of Chancery. The following is the act by which this object is effected:—

An Act for the further Relief of Trustees. [28th July, 1849.]

That if upon any petition presented to the Lord Chancellor or Master of the Rolls in the matter of the act 10 & 11 Vict. c. 96, it shall appear to the judge of the Court of Chancery be-

fore whom such petition shall be heard that any monies, annuities, stocks, or securities are vested in any person as trustees, executors, or administrators, or otherwise upon trusts within the meaning of the said act, and that the major part of such persons are desirous of transferring, paying, or delivering the same to the Accountant-General of the High Court of Chancery under the provisions of the said recited act, but that for any reason the concurrence of the other or others of them cannot be had, it shall be lawful for such judge as aforesaid to order and direct such transfer, payment, or delivery to be made by the major part of such persons without the concurrence of the other or others of them; and where any such monies or government or parliamentary securities shall be deposited with any banker, broker, or other depository, it shall be lawful for such judge as aforesaid to make such order for the payment or delivery of such monies, government or parliamentary securities, to the major part of such trustees, executors, administrators, or other persons as aforesaid, for the purpose of being paid or delivered to the said Accountant-General as to the said judge shall seem meet; and every transfer of any annuities, stocks, or securities, and every payment of money or delivery of securities, in pursuance of any such order, shall be as valid and effectual as if the same had been made on the authority or by the act of all the persons entitled to the annuities, stocks, or securities so transferred, or the monies or securities so paid or delivered respectively, and shall fully protect and indemnify the Governor and Company of the Bank of England, the East India Company, and the South Sea Company, and all other persons acting under or in pursuance of such order.

DEFECTS IN LEASES ACTS SUSPENSION.

12 & 13 VICT. c. 110.

An Act for suspending, until the first day of June, one thousand eight hundred and fifty, the operation of an act passed this Session, intitled "An Act for granting Relief against Defects in Leases made under Powers of Leasing in certain Cases." [1st Aug. 1849.]

This act recites the 12 & 13 Vict. c. 26, intitled "An Act for granting Relief against Defects in Leases made under Powers of Leasing in certain Cases:" And that it is expedient to suspend the operation of the said act as hereinafter mentioned: it is therefore enacted, That the said act shall be and the same is hereby rendered wholly inoperative until the first day of June one thousand eight hundred and fifty, in the same manner as if it had been originally enacted by the said act that the same should not come into operation until that time.

ALLOWANCES ON THE PURCHASE OF STAMPS.

12 & 13 VICT. c. 80.

An Act to repeal the Allowances on the Purchase of Stamps, and for receiving and accounting for the Duties on Gold and Silver

Plate, and to grant other Allowances in lieu thereof. [1st August, 1849.]

By the 44 Geo. 3, c. 98; 9 Geo. 4, c. 27, and 5 & 6 Vict. c. 82, certain allowances on stamps were granted and made payable. By the 1st section of the present act, the recited allowances are repealed.

2. That in lieu of the several allowances hereby repealed, there shall be made, allowed, and paid in Great Britain and Ireland respectively the several allowances following; (that is to say,)

To any person who at one and the same time shall produce at the office of the said Commissioners in London or Dublin to be stamped, or shall purchase of the said Commissioners at their office in London, Edinburgh, or Dublin, vellum, parchment, or paper stamped with stamps (not being labels for medicines) under the value respectively of 10*l.* each, but to the amount or value in the whole of 30*l.* or upwards, 1*l.* 10*s.* for every 100*l.*, and so in proportion for any greater or less sum not under 30*l.*

To any person who shall at one and the same time purchase of the Commissioners of Inland Revenue, at their office in London or Edinburgh, stamped labels for medicines the duty whereon shall amount to 50*l.* or upwards, 5*l.* for every 100*l.*, and so in proportion for any greater or less sum not under 50*l.*

For receiving the duty for and in respect of gold plate or silver plate made or wrought in Great Britain or Ireland, paying the same, and making out the accounts according to the directions of the several acts of parliament in that behalf made, 1*l.* for every 100*l.* so received, paid, and accounted for, and so in proportion for any greater or less sum.

3. That the said allowances by this act granted and made payable shall be under the charge and care of the Commissioners of Inland Revenue, and all powers, provisions,

clauses, regulations, and directions contained in any act or acts of parliament or otherwise, and now in force, in relation to the several allowances hereby repealed, shall be of full force and effect with respect to the several allowances by this act granted or made payable, as far as the same are or shall be applicable, and shall be observed, applied, and put in execution, so far as the same shall be consistent with the express provisions of this act, as fully and effectually, to all intents and purposes, as if the same had been herein repeated and specially enacted with reference to the said allowances hereby granted and made payable.

SECOND INCLOSURE OF COMMONS ACT, 1849.

13 & 14 VICT. C. 57.

An Act to authorize the Inclosure of certain Lands in pursuance of a Special Report of the Inclosure Commissioners for England and Wales. [28th July, 1849.]

The Inclosure Commissioners for England and Wales have, in pursuance of the 8 & 9 Vict. c. 118, issued their provisional orders for and concerning the proposed inclosures mentioned in the schedule to this act, and the requisite consents thereto have been given since the date of their Fourth Annual General Report: And the said Commissioners have by a special report certified their opinion that such proposed inclosures would be expedient; but the same cannot be proceeded with without the previous authority of parliament: It is therefore enacted,

1. That the said several proposed inclosures mentioned in the Schedule to this act be proceeded with.

2. In citing this act in other acts of parliament, and in legal instruments, it shall be sufficient to use the expression "The Second Annual Inclosure Act, 1849."

THE SCHEDULE.

Saint Harmon	Radnor	5th January, 1849.
Loxton	Somerset	15th February, 1849.
Swannington	Norfolk	26th June, 1848.
Brandiston and		
Haverland		
Brasted Chart	Kent	8th February, 1849.
Saint Ive Down	Cornwall	29th March, 1849.
Creigbyther	Radnor	8th February, 1849.
Hailey and Crawley	Oxford	8th February, 1849.
Rumburgh Common	Suffolk	12th April, 1849.
Hailsham	Sussex	22nd March, 1849.
Hellingly and		
Arlington		
Binated	Southampton	5th January 1849.
Ponsonby	Cumberland	20th January, 1849.
Calder	Cumberland	20th January, 1849.
Crosby and Birkby	Cumberland	28th February, 1849.
Rotherwick	Southampton	7th June, 1849.
Brockley	Suffolk	14th June, 1849.
Bedfield Long Green	Suffolk	15th April, 1849.
Bradfield Saint George	Suffolk	14th June, 1849.

COUNTY AND POLICE RATES.

12 & 13 VICT. c. 65.

There are several parishes and places in England and Wales, parts of which are comprised in boroughs not subject to county rate or district police rate, while the parts out of the borough are liable to contribute thereto; and there are several parishes parts of which are comprised in boroughs which are subject to district, borough, and other rates, while the parts out of the borough are *not* liable to contribute thereto. It is therefore enacted.

1. That the overseers of parishes situated partly within boroughs and partly without, may collect the *county*, *county police*, and *district police* rates, leviable on the part of the parish not comprised within the borough.

2. The like provision is made for collecting the *borough* rate in places similarly situated.

3. Persons assessed may appeal against the rate, and provision is made for auditing the accounts of the overseers and collectors.

4. Where a precept is directed to the guardians of a union under 7 & 8 Vict. c. 33, comprising the divided place, the guardians may require the overseers to pay their treasurer a sufficient sum.

5. Where the amount required for the county or other rate is small, the making of the rate for reimbursement may be postponed.

6. After the 29th September, 1849, so much of the 1 Vict. c. 81, as applies to the making a county and borough rate in divided parishes is repealed.

The following are the enactments:—

1. That where any parish or place separately maintaining its own poor shall be divided in manner hereinbefore stated, and any county rate, or county or district police rate, or other rate which may by law be raised in like manner as a county rate, shall be assessable upon the part of the parish or place which is comprised within the county and excluded from the borough, the overseers of such parish or place shall, on receipt of any precept or other lawful demand from the justices of the county, or other due authority in that behalf, demanding the payment of any sum of money as the contribution of the part of such parish or place out of the borough towards any such rate as aforesaid, with all convenient speed assess the sum so required upon the persons liable within such part of the parish or place to pay the poor rate therein, by means of a separate rate, to be made, allowed, and published in like manner as the poor rate; and either by themselves or by the collector of poor rates for the time being appointed for the said

parish or place shall collect the same separately or with the poor rate payable by the parties assessed thereto, and for the purposes of assessing and collecting the same shall have all such powers, authorities, privileges, protections, and incidents as belong to them in the assessing and collection of the poor rate; and all provisions of the law for enforcing the collection of the poor rate, and recovering the costs of the proceedings therein, shall be applicable to the collection of the rate or rates herein provided for.

2. That in every case in which any such parish or place shall be partly within and partly without any borough, the overseers or other persons charged with the collection of the rates made for the relief of the poor in such parish or place, upon the receipt of any warrant from the mayor, or any justice or justices of the peace, high constable, or other officer duly authorized to act in that behalf within the borough, for the payment of money for the contribution of the part of such parish within such borough towards any district, borough, or other rate, (which warrants every such mayor, justice of the peace, high constable, and other officer shall be severally empowered to direct to them in like manner as if the whole of such parish or place were within their borough,) shall assess upon and levy from the inhabitants and occupiers of all messuages, lands, tenements, and hereditaments liable to the poor rates in that part of their parish or place which is within the borough, the amount mentioned in the warrant, either as a separate rate or rates, for which the said overseers shall have all the powers which belong to them for levying a rate for the relief of the poor, or with and as part of the poor rate to which the inhabitants and occupiers of property within that part of the parish or place may be liable in common with the inhabitants and occupiers of property within the other part thereof which is not within the borough, and out of the monies so levied and collected shall pay the amount mentioned in the warrant to the person duly authorized to receive the same, and in default thereof shall be subject to all the provisions and penalties provided by this act, or any act concerning the non-payment of any borough rate.

3. That any person assessed to any rate made under the authority of this act may appeal against the same in like manner, and with the like consequences in all respects, and subject to the provisions and regulations, as in appeals against the Poor Rate; and that every overseer and collector shall account for the money levied, collected, and expended under the authority of this act, to the auditor of the district comprising such parish or place, in like manner as for the Poor Rate, and if any balance be found to be in his hands shall apply the same towards the next rate required for the purpose of this act, or shall pay the same to his successor in office; and in default of his so applying the same while in office, or making payment to his successor within seven days

after the balance shall have been found, such auditor shall proceed to recover the same from the person holding the same, in like manner as sums certified by him to be due from persons accounting shall from time to time be recoverable, and he shall be paid his costs and expenses, when not recovered from the defendant, by the then overseers of the parish or place, who shall be reimbursed out of the balance of such rate, or, if need be, out of the next rate.

4. That where a precept shall be issued to the guardians of the union comprising any such parish or place, under the provisions of the act passed in the 8th year of the reign of her Majesty, intituled "An Act for Facilitating the Collection of County Rates, and for Relieving High Constables from Attendance at Quarter Sessions in certain Cases, and from certain Duties," and such precept shall contain a sum to be assessed and charged in respect of any such rate as is herein provided for, upon a part of such parish or place as aforesaid, the said guardians may require the overseers of such parish or place to pay to their treasurer a sum of money, sufficient to enable the said guardians to pay the sum so assessed, with the other sums mentioned in the said precept, to the treasurer of the county or other person lawfully authorized to receive it; and the said overseers shall pay the amount out of any monies in their possession belonging to the parish or place, or to the part of such parish or place respectively, and reimburse themselves, if necessary, by a rate, to be levied as hereinbefore described, upon the persons liable thereto, or if they have no such monies shall forthwith proceed to levy and collect the requisite amount by such rate, and pay the same over to the treasurer or the said guardians: Provided nevertheless, that if such overseers make default and do not make the requisite payment within the appointed time, they shall be subject to be proceeded against in like manner as the overseers of a parish wholly situated within the county are subjected to under the provisions of the said act.

5. That where the amount required in respect of any such county rate, police or district rate, from any part of such parish or place as aforesaid, shall in the judgment of such overseers be so small as to render the levying and collecting of a separate rate for it inconvenient, the overseers may postpone the reimbursement of themselves for any such advance as aforesaid, and they or their successors may afterwards, on the recurrence of the next precept or other lawful demand, or of that next but one, levy and collect such a rate as aforesaid to raise the whole amount so previously advanced and unsatisfied out of the poor rates of the parish, as well as the amount required by the then precept or demand, and shall apply the sum so collected in reimbursement of the previous payments, and the satisfaction of such precept or demand, and shall apply the balance, if any, towards the discharge of the next precept or demand.

6. That from the twenty-ninth day of

September, 1849, so much of the act passed in the 1st year of her Majesty, intituled "An Act to provide for the levying of Rates in Boroughs and Towns having Municipal Corporations in England and Wales," as applies to the making, levying, and collecting the county rate and borough rate in divided parishes or places, shall, except in respect of rates before that time made, levied, or collected, or of any arrears of rates in course of being collected, be repealed, and all balances which may remain over the sums required by the precepts under which the rate was levied shall be applicable towards the discharge of the next county rate or borough rate assessed upon such divided parish or place, and if not so applied by the party holding the same shall be recoverable by the person entitled to receive the same, on complaint before two justices of the peace of the county having jurisdiction in that part of the parish or place, who shall make an order for the payment of the sum due, to be enforced in like manner and with the like consequences as orders of justices for the payment of money shall be then by law enforceable.

HIGHWAY RATES.

12 & 13 VICT. c. 54.

An Act to continue until the 1st day of October, 1850, and to the End of the then next Session of Parliament, an Act for authorizing the Application of Highway Rates to Turnpike Roads. [28th July, 1849.]

Reciting, that an act was passed in the 4 & 5 Vict. c. 59, intituled "An Act to authorize for One Year, and until the End of the then next Session of Parliament, an Application of a Portion of the Highway Rates to Turnpike Roads in certain Cases," which act has been continued by sundry acts until the 1st day of October in the year 1849, and to the end of the then next Session of Parliament; and it is expedient that the same be further continued: It is therefore enacted, That the said act shall be continued until the 1st day of October in the year 1850, and to the end of the then next Session of Parliament.

EXEMPTION OF STOCK IN TRADE FROM POOR RATE.

12 & 13 VICT. c. 61.

An Act to continue until the 1st day of October, 1850, and to the End of the then next Session of Parliament, the Exemption of Inhabitants from Liability to be rated as such in respect of Stock in Trade or other Property to the Relief of the Poor. [28th July, 1849.]

Reciting the 3 & 4 Vict. c. 89, "An Act to exempt until the 31st day of December, 1841, Inhabitants of Parishes, Townships, and Villages from Liability to be rated as such in respect of Stock in Trade or other Property to the Relief of the Poor:" And such act hath been since continued by sundry acts until the

1st day of October, 1849, and to the end of the then next Session of Parliament, and it is expedient that the act be further continued: It is therefore enacted, That the first-mentioned act shall continue in force until the 1st day of October in the year 1850, and to the end of the then next Session of Parliament.

LAW LISTS AND DIRECTORIES.

SUGGESTED IMPROVEMENTS.

To the Editor of the Legal Observer.

SIR,—There are now no less than three Law Lists or Law Directories before the public and the profession.—1st. The Law List, established about the year 1770, and since the imposition of the Certificate Duty in 1785, authenticated as to the attorneys by an officer at the Stamp Office.

2ndly. The Post-Office Directory, in which the names of professional men were for many years included, with merchants, traders, and others, but of late years containing a separate law directory.

3rdly. Another law directory has been recently issued, called the "Lawyers' Companion."

The first of these works is well known to the profession, and to a certain extent accurate and useful, but it is manifest that a much more complete work for the use of the profession could be supplied by the Incorporated Law Society, as the Registrar of Attorneys and Solicitors, having copies of the Rolls of all the Courts, and bound to compile an Alphabetical Roll of all the attorneys in England and Wales, with the dates of their admissions.

The fact is, that the Law List comprises only the names of those who have taken out their certificates before the 1st January, and consequently excludes several hundred practitioners who, from inability, inadvertence, or other causes, omit to pay the duty. These persons may at any moment renew their certificates, and their names and addresses ought therefore to appear, unless they cease to practise for more than a year.

Many improvements might be suggested in the contents and in the form and mode of such an annual volume, but which it is unnecessary at present to specify. I trust the subject will receive that attention which you always bestow on matters in any way useful to the profession.

M. H.

LEGAL EDUCATION.—LONDON UNIVERSITY.

To the Editor of the Legal Observer.

SIR,—Referring to the letter of "Attornatus," in your journal of the 25th August, relating to the suggested improvements in Legal Education, and particularly as to the examination in

classics and mathematics, I beg to call your attention to the supplemental charter recently granted to the University of London. Amongst other provisions there is the following clause:

"We further will and ordain, that the said Chancellor, Vice-Chancellor, and Fellows shall have power, after examination, to grant certificates of proficiency in such branches of knowledge as the said Chancellor, &c. shall from time to time, by regulations made according to the provisions of our (former) charter in this behalf, determine; and that in addition to the examinations of candidates for degrees in our said charter mentioned and ordained, the said Chancellor, &c., may cause to be held from time to time examinations of persons who shall have prosecuted the study of such branches of knowledge, and who shall be candidates for such certificates of proficiency as aforesaid, subject to such regulations as by the said Chancellor, &c., shall from time to time be made in this behalf."

The University might grant under this authority testimonials of proficiency in classics and mathematics, to be produced on registering the articles, or the Judges might authorize the examiners to receive similar certificates of proficiency from other institutions.

I think that besides Latin, French, and a certain portion of mathematics, the candidate should be examined in general history, and some of the sciences, the application of which may bear on his professional duties.

W.

INCORPORATED LAW SOCIETY.

LECTURES, 1849-50.

Three Courses of Lectures will be delivered in the Hall of the Society, on Monday and Friday evenings in the months of November, December, January, February, and March next, at eight o'clock, precisely.

On Equity and Bankruptcy. by Richard Jebb, Esq., Barrister-at-Law.

In these Lectures it is proposed to treat of the following subjects:—

1. The Jurisdiction of the Court of Chancery with reference to the specific performance of Contracts, including a short exposition of the chief doctrines of Equity, more immediately connected with, or derived from, the exercise of that Jurisdiction.

2. The exercise of the Court's Jurisdiction by Injunction: 1st, generally; and 2nd, with special reference to the protection of copyright, and patents of invention, against piracy and invasion.

3. The Joint Stock Companies Winding-up Acts, 1848, 1849, 11 & 12 Vict. c. 45, and 12 & 13 Vict. c. 108.

4. The principal points of Alteration in the Bankrupt Law effected by the recent Act, 12 & 13 Vict. c. 106.

5. New Points in Equity and Bankruptcy.

On Common Law and Criminal Law, by J. Alleyne Maynard, Esq., Barrister-at-Law.

1. The Law of Executors and Administrators.
2. On the Agreement required between the Pleadings and Evidence in Civil and Criminal Cases, and the Amendment of Variances.
3. Occasional subjects of interest arising in the Common Law Courts, and otherwise.
4. On the Law of Larceny.

On Conveyancing, by Edward Kent Karslake, Esq., Barrister-at-Law.

1. Introductory Lecture on the Origin, Progress, and Objects of the present Practice of Conveyancing.
2. On Conveyances of Freeholds to Purchasers, particularly to Railway Companies.
3. On Assurances of Copyholds to Purchasers.
4. On Leases, and Assignment of Leaseholds to Purchasers.
5. On Exchanges and Deeds of Partition.
6. On Mortgages, and Transfers of Mortgages.
7. On Disentailing Deeds and Settlements of Real Property.
8. On Settlements of Personal Property.
9. On Disclaimers, Appointments of New Trustees, Releases, and Deeds of Indemnity.
10. On Co-partnership Deeds.
11. On Deeds of Composition with Creditors.
12. On Wills.

These Lectures will especially notice the practical effect of recent Statutes and Decisions upon each of the above-mentioned forms of Assurance.

The members of the Society may attend without subscribing.

* * To prevent interruption at the Lectures, Subscribers cannot be admitted to the Hall after the Lecture has commenced.

MOOT POINTS.

PARTNERSHIP.—FELONY.

A. and *B.* are in partnership as brokers, and *A.* commits felony, is convicted, and transported beyond the seas. He afterwards obtains a pardon and returns to this country.

Can *B.* recover the debts due to the partnership for business transacted before the felony was committed? If so, must *B.* sue in his own name alone, or jointly with that of his late partner? And how *jointly*, since by the felony, *A.* forfeited his property to the Queen? Also, can *A.*, on his return as above mentioned, demand, and file his bill for, an account from his partner of the monies due to or received on account of the late firm up to the period of the commission of the felony?

Does *A.*'s property, which was forfeited by the felony, revert to him on his obtaining the free pardon?

W. C.

NOTES OF THE CIRCUIT.

INCREASE OF CASES OF POISONING.

The Lord Chief Baron, in his charge to the grand jury at Lewes, on the 30th July, called their attention to the case of a widow, accused of poisoning her husband and children, in order to obtain fees from the Burial Society. His Lordship said,

"On a former occasion when I took the circuit, a similar charge was presented in a neighbouring county, I think it is much to be regretted that some inquiry has not taken place, and, if necessary, some measure been adopted for the purpose of regulating the institutions or clubs or insurance offices by which persons are enabled to obtain a sum of money on the death of a member of their family. It seems to me important to the public welfare, that the matter should be seriously and thoroughly investigated, for the purpose of ascertaining whether in reality it be a dangerous practice under the circumstances which at present belong to it,—whether it be one which calls for some regulation which may give confidence to the public that such institutions are not abused, and give protection to those who belong to them, so that they may not be improperly charged with offences of which they are utterly innocent, and which have no connexion with their belonging to such institutions. It is obvious that some regulation might be adopted that would free the transaction very much of suspicion; for instance, if instead of money being paid, the burials were performed by the institution, no money passing, so as to benefit any one by the insurance. I am exceedingly anxious to make these observations without in the smallest degree expressing an opinion upon or alluding to the circumstances of any particular case; but it is manifest that either there is guilt or innocence that has been accused, and that the accusation, or suspicion, seems very much to arise out of the facility for doing such things, and the temptation, perhaps, they offer to improper practices in domestic life. I hope such of you as have any means of doing so will bear these observations in your mind, and endeavour to advance the object, so that the fullest inquiry may be instituted, with a view to determine what legislative interference can or ought to take place for preventing the evil."

HOME CIRCUIT.—MR. SERJEANT DOWLING.

Our readers will recollect, that on the decease of Mr. Justice Coltman, a new commission of assize was issued, including the name of Mr. Serjeant Dowling, who, consequently, presided in one of the courts on the Norfolk circuit. On the termination of the learned Serjeant's labours, he returned to his own circuit, the *Home*, and there, in consequence of the pressure of business, the learned Serjeant expressed his readiness to try the common jury causes. This has saved an enormous expense to the different parties, as but for the valuable assistance thus rendered the assizes would have lasted at least a fortnight longer.

NOTES OF THE VACATION.

THE NEW STATUTES OF 1849.

In the dearth of legal intelligence during the Long Vacation, we avail ourselves of all the space afforded us for the Statutes of the last Session. Already we have given no less than twenty-five; and hope before the close of the volume next month to find room for the remainder. Our readers will thus possess, by the ensuing Term, "within the four corners" of our Legal Record, all the necessary information of the various alterations in the law effected in the last Session of Parliament.

DIGEST OF ALL REPORTED CASES.

Ten sections of the Analytical Digest of all Reported Cases in the Superior Courts have already been given in the present volume. Five more will close the Series: they will chiefly be devoted to the decisions in the Common Law Courts. This classification of the points decided, under their respective heads in each Court, with the facility of reference to each section, and the Index of Cases, has been, as we are gratified to learn, highly approved.

RECENT DECISIONS IN THE SUPERIOR COURTS.

AND SHORT NOTES OF CASES.

House of Lords.

Beckham v. Drake and others. June 11, 19, 1847; July 6, 27, 1849.

RIGHT OF ACTION.—BANKRUPT.—ASSIGNEES.

Upon appeal from the Exchequer Chamber, reversing the decision of the Court of Exchequer, Held, that the right of action for a penalty, as liquidated damages for breach of contract, passed to the assignees, being a debt due to the bankrupt before the bankruptcy, and therefore part of the assets.

THE appellant had been, in 1834, foreman to Messrs. Knight, Surgey and Drake, type-founders and letter-press printers, under an agreement in writing between him and Knight and Surgey; the respondent Drake being a sleeping partner. It was agreed thereby that the plaintiff was to serve the defendants for the period of seven years, at 3l. 3s. per week, and that if either of the parties should not truly observe the agreement, the party making default should pay the sum of 500l. as specific damages. The plaintiff having been dismissed, as he alleged, without reasonable cause, before the expiration of the seven years, brought this action in assumpsit for the breach of the contract. The defendant pleaded non-assumpsit, and that as the defendant had become bankrupt, the cause of action vested in his assignees. The plaintiff demurred generally, citing *Howard v. Crowther*, 8 M. & W. 601, and contended, that it being a contract for personal labour the right of action did not pass to the assignees. Upon the hearing of the demurrer, the Court of Exchequer allowed the demurrer, and held, that the plaintiff was entitled to sue on the contract, (8 M. & W. 846). The action was then tried and 100l. damages recovered, and the Court of Exchequer decided the points reserved for the plaintiff, (9 M. & W. 79). The judgment was, however, reversed by the Court of Exchequer Chamber, and this appeal was now presented.

Martin, Stammers, Peacock, H. Hill and H. Morris, for the several parties.

The learned judges on the 6th July delivered their judgment *seriatim*: *V. Williams, Wight-*

man, Erle, Cresswell, Maule, Parke, JJ., and Wilde, L.C.J., holding that the right of action did pass to the assignees, *Rolfe and Platt, JJ.* being of the contrary opinion.

Lord Brougham on the 27th July moved the judgment of the House, that the judgment of the Exchequer Chamber be reversed, and Lord Campbell having concurred, judgment was given for the defendant in error, with costs.

Vice-Chancellor of England.

In re Ravenscroft's Trust. June 29, 1849.

WILL.—PARTIAL CANCELLATION.—MARGINAL NOTE.—CONSTRUCTION.

Upon construction of a will and the effect of a partial cancellation and marginal note: Held, that the intention expressed in the note was present and not deliberative, and therefore passed the residue as therein devised.

THIS was a petition praying a declaration as to the construction of a will and the effect of a partial cancellation. The testator, Edward Ravenscroft, by his will, gave four 16ths of his residuary estate to his granddaughter, Lady Hereford, four 16ths to another granddaughter, Mrs. Fairfax, and two 16ths to each of his four grandsons. Some time afterwards, one of the grandsons having died, the testator drew his pen through the material parts of this bequest, and wrote in the margin a note stating such death, and that the three other grandsons were sufficiently provided for, and that he therefore intended to bequeath 1,000l. to each of the three surviving grandsons, and to divide the residue of his undisposed of property equally between his two granddaughters. The residue amounted to 25,000l.

Bethell and Freeing for the petitioners; *Rolt and De Ges* for the representatives of the deceased brother; *J. Parker and Cairns* for the trustees.

The Vice-Chancellor held, that the intention expressed in the will was present, and that the two granddaughters were therefore entitled to the residue, subject to the payment of the three legacies of 1,000l.

Lander v. Weston. July 8, 1849.

ADMINISTRATION SUIT.—EXCEPTIONS.—ANSWER.

Where a legal representative and heir-at-law was not alleged by the bill to be privy to the dealings of his testatrix: Held, that he was not bound to answer the particulars of her dealings with regard to the estate of a testator who died indebted to the plaintiff, and left her universal legatee.

THIS suit was instituted to render the testator's legal personal representative and heir-at-law liable for certain sums of money in which at his death he was indebted. The bill alleged that Thomas Farr being so indebted, died, leaving his wife, Mary Farr, his universal legatee, who at her death left Robert H. Farr her representative, and then called on him to set forth the particulars, in what manner, and to whom Mary Farr had disposed of the testator's property come to her hands. He however refused to answer, although admitting that sufficient assets had come to her hands to satisfy the plaintiff's claim. The Master had overruled the exceptions to this answer for insufficiency as to the real estate, but allowed them as regarded the personality, to which finding exceptions were taken.

Bethell and Freeling in support of the exceptions; *Stuart and Welford*, contra.

The Vice-Chancellor said, that as it did not appear by the bill that Robert H. Farr was privy to any of the dealings of Mary Farr in respect of the testator's estate, he could not be called upon to answer as to the particulars. And the exceptions to the Master's report must, therefore, be allowed.

Vice-Chancellor Knight Bruce.

Short v. Mercier. June 23, 1849.

STOCK-JOBGING ACT.—EXCEPTIONS TO ANSWER.—DISCOVERY.

Upon exceptions to the Master's report finding a further answer insufficient, Held, that as the discovery of the transactions in question would subject the defendants to a penalty under the 7 Geo. 2, c. 8, s. 8, (the Stock-Jobbing Act,) they were protected from discovery, and the exceptions to such report were allowed.

THIS bill was filed for the transfer and re-delivery of certain railway shares and certificates which the plaintiff had transferred to the defendants, to secure any balance which might become due in his transactions with them, and also for an account of such dealings. The defendants claimed to be protected from discovery, on the ground that it would subject them to a penalty of 100*l.* under the 7 G. 2, c. 8, s. 8, for negotiating time bargains, and which plea was allowed to stand for an answer. The plaintiff having excepted to this answer for insufficiency, five of such exceptions were allowed, and upon exceptions to the Master's report disallowing the other nine, the Vice-

Chancellor Knight Bruce allowed such exceptions. The defendants then put in a further answer, and alleged that 68*6l.* 2*s.* 6*d.* was due to them from the plaintiff, on the balance of accounts, and also pleaded the 7 Geo. 2, c. 8, as protecting them from the discovery. The Master having allowed exceptions to this answer for sufficiency, the cause now came on upon exceptions to that finding.

Swanston and H. Prendergast in support of the exceptions; *Russell and F. Bayley*, contra, cited *Regina v. Garbett*, 2 Carr. and K. 474.

The Vice-Chancellor said, that as the facts, of which discovery was sought, would be a material link in the chain of evidence of the guilt of the defendants upon a charge of negotiating time bargains, which would subject them to a penalty under the 7 Geo. 2, c. 8, s. 8, they were protected from the discovery. The allegation in the further answer that a balance of account was due to the defendants could not be considered as an intention on their part to treat the transactions as legal, but merely that if they were so, there was a balance in their favour. The exceptions to the report would therefore be allowed.

Esparte Samuel and others, in re Lloyd. July 2, 1849.

FRIENDLY SOCIETY.—COSTS OF PETITION FOR PAYMENT IN FULL BY BANKRUPT TREASURER.

The petitioners for the payment in full of a sum of money belonging to a friendly society in the hands of their treasurer who had become bankrupt, were allowed their costs; and it appearing that the proceeds of the bankruptcy would not allow of the expense of an action at law, were allowed to prove for the amount.

THE Wrexham Friendly Union Society was instituted in 1807, and its funds chiefly lodged in Lloyd's Bank at Wrexham, who was appointed treasurer. Mr. Lloyd having become bankrupt in Jan. 1849, this petition was presented for the payment in full of a sum of 5,152*l.* 18*s.* 4*d.* which was in his hands, by the assignees.

Bacon and Bromley, in support of the petition, cited *Esparte Riddell*, 3 Mont., D. & De G., 80; *Russell and Pryor*, for the assignees, contra, citing *Esparte Stamford Friendly Society*, 15 Ves. 280; *Esparte Ross*, 6 Ves. 802.

The Vice-Chancellor, upon the parties consenting, said, that as the sum was considerable and the question important, it would be as well to have an action at law upon proper admissions, and in the meanwhile no dividend to be declared, and the petition to stand over. But, subsequently, upon the application of the petitioners stating that there was doubt whether the proceeds of the bankruptcy would justify further expense in the matter, the Vice-Chancellor allowed them to prove for the amount under the bankruptcy, and ordered the costs of their application to be paid.

Esparte Browne, in re Fenwick. July 9, 1849.

PROOF FOR CALLS UNDER WINDING-UP ACT.

A petition was dismissed with costs, seeking to expunge a proof by the official managers of a joint-stock banking company, in respect of a call made by the Master upon the bankrupt under the 11 & 12 Vict. c. 45, although the consent of the Master to such proof had been subsequently given, and proof had been made under the bankruptcy by a creditor of the banking company.

This was a petition, by way of appeal from Mr. Commissioner *Ellison*, that a proof might be expunged for 4,918*l.* 9*s.* 11*d.* which had been made by the official managers of the North of England Joint-Stock Bank, in respect of a call of 30*l.* per share under an order of the Master, for paying the debts of the company according to the provisions of the 11 & 12 Vict. c. 45. It appeared that one of the creditors of the banking company had proved under the fiat for 11,739*l.* 11*s.* 3*d.*, due from the company.

Swanston, F. S. Williams, and Brooksbank, in support of the petition; *Bacon and Pryor*, contra.

The Vice-Chancellor said, that although before the act the proof in question could not have been made, yet the provisions of the statute, must be obeyed, whatever consequences might follow or anomalies arise, and the proof therefore was allowed. As to the Master's approval of the proof being wanting, the objection was too late, and as it was proved to have been since given it was sufficient. The petition must consequently be refused, with costs.

Queen's Bench.

(Before the Four Judges.)

Regina v. Baptist Missionary Society.

May 26, June 9, 1849.

LIABILITY OF MISSIONARY SOCIETY TO PAY RATES.

Where a society for sending missionaries abroad had premises which were also used by other charitable societies who paid a proportion of the expenses of lighting, firing, and cleansing; and also printed a report and other periodicals which were sold occasionally at the premises, although no profit accrued to the members: Held, liable to a rate under the 11 G. 3, c. 29, s. 41.

THE Baptist Missionary Society was rated in respect of the house and premises situate at No. 33, Moorgate Street, as liable to pay a sewers' and paving rate by the City Commissioners of Sewers, under the 11 G. 3, c. 29, s. 41. The officer of the Society had appealed against the rate to the Recorder at the City Quarter Sessions, who had however confirmed the rate, subject to the opinion of this Court upon a special case as to the liability of the society.

It appeared that the society is supported by

voluntary contributions and the interest of a fund of 20,000*l.*, and that the annual income amounts to 25,000*l.*, the whole of which is devoted to sending out and supporting missionaries for the conversion of the heathen in various parts, and in supporting the widows and families of missionaries dying abroad, and that none of the members derive any individual benefit from the society. Other charitable societies of the Baptist denomination used the premises for the purpose of holding their meetings and keeping their books, and paid a proportion of the expenses of lighting, firing, and cleansing of the buildings. There was also a library connected with the society, and a report and other periodicals were printed and sold on the premises when applied for, but it was stated that the proceeds did not cover the outlay.

The Attorney-General and *Clarkson* in support of the rate, cited *Regina v. Sterry*, 12 A. & E. 84; *Butt, Q. C.*, and *Prendergast*, contra, cited *Rex v. Waldo*, Cald. 358; *Regis v. Wilson*, 12 A. & E. 94.

Cwr. ad. val.

The Court held, that the society was liable to be rated according to the case cited at bar of *Regina v. Sterry*, as there was a beneficial occupation of the premises and rent was received from the other societies. The order of sessions must, therefore, be affirmed.

Regina v. Parham. June 5, 6, July 5, 1849.

COUNTY COURTS' ACT.—CONSTRUCTION.—JUDGE FOR SEVERAL DISTRICTS.

Upon demurrer to a return to a quo warranto calling on the judge of the Worcestershire County Court to show by what authority he exercised that office, Held, that, upon construction of the 3rd and 9th sections of the 9 & 10 Vict. c. 95, a judge may be appointed for several districts.

THIS was an information in the nature of a quo warranto, calling upon Benjamin Parham, Esq., to show by what authority he held the office of judge of the 12 district County Courts of Worcestershire. The defendant made a return to the mandamus, which was demurred to. Under the 2nd section of the 9 & 10 Vict. c. 95, the county of Worcester was divided into 12 districts, viz., Bromsgrove, Droitwich, Dudley, Evesham, Kidderminster, Pershore, Redditch, Shipston, Stourbridge, Tenbury, Upton, and Worcester. The question now raised was, whether there ought not to be a distinct judge for every separate district.

Sir F. Kelly, Godson, Q. C., and Mellish, in support of the demurrer, contended that there ought to be a judge to each district in a county. By section 1, her Majesty, with the advice of her Privy Council, may order this act to be put in force; by section 2, to divide the whole or part of any county into districts; and under section 3 it is enacted, that "there shall be a judge for each district to be created under this act, and the County Court may be

holden simultaneously in all or any of such districts."

The *Attorney-General* and *Phipson*, contra, urged that it was competent for one person to be the judge of as many County Courts under distinct appointments as he could fulfil the duties of, and that there was nothing in the act to prevent the same judge from acting for several districts.

Cur. ad. vult.

The Court said, that the 3rd section was doubtlessly so framed in order to meet the possibility of the Courts being held simultaneously, in which case there would necessarily be separate judges appointed, but it did not follow that the judge of one district County Court must not be the judge of another County Court. Then, by the 9th section, the Lord Chancellor has power to "appoint as many fit persons as are needed to be judges of the County Court under this act." If it had been intended to prevent one person holding the judgeship of more than one Court, restrictive words would have been used, since there is nothing to prevent one person from holding several offices. The defendant has, therefore, been duly appointed within the provisions of the statute, and there must be judgment for the defendant with costs.

Robinson v. Waddington. June 9, 1849.

LANDLORD AND TENANT.—REPLEVIN.—CLEAR DAYS.

Held, that under the 2 Will. & Mary, st. 1, c. 5, s. 2, a tenant is entitled to five clear days in which to replevy goods taken in distress, exclusive both of the day of seizure and the day of sale.

THE plaintiff, by an agreement dated 12th May, 1846, became tenant from year to year, at a rent payable the 1st June, of a farm at Beverley, Lancashire—the tenancy as to the land to commence from February, and as to the house from the date of the agreement. The landlord had seized goods on the 25th September, and sold them on the 30th for the rent, which, as he alleged, was payable on the 1st June. An action was thereupon brought by the plaintiff to recover damages for an excessive distress, but the defendant obtained a verdict. A rule nisi had been obtained for a new trial on the ground of misdirection in directing the jury, 1st, that the rent was a fore-hand rent, and that the 1st year's rent became due on the 1st June; and 2ndly, that the goods seized on the 25th September had been legally sold on the 30th September.

The Court held, that under the 2 Will. & M. stat. 1, c. 5, s. 2, a tenant was entitled to five clear days exclusive both of the day of seizure and of the sale in which to replevy, and therefore made the rule absolute for a new trial on this ground.

Eschequer.

Merchant Seamen's Hospital Society v. The

Mayor and Corporation of Liverpool. June 1, 6, 1849.

MUNICIPAL CORPORATION ACT.—MERCHANT SEAMEN'S ACT.—PENALTIES.

Held, that the penalties recovered under the 7 & 8 Vict. c. 112, (*the Merchant Seamen's Act*.) were payable to the Hospital Society under that act, and not to the borough treasurer under the 5 & 6 W. 4, c. 76, the former statute relating to "trade or navigation," and therefore within the proviso in the latter act.

THIS was a special case by order of Mr. Baron Alderson for the opinion of the Court on the question whether the moiety of certain penalties amounting to 655l. 6s. 4d., recovered before a justice of the peace for the borough of Liverpool under the 7 & 8 Vict. c. 112, (*the Merchant Seamen's Act*.) was payable to the Merchant Seamen's Hospital Society under that act, or to the treasurer of the borough fund under the 5 & 6 W. 4, c. 76, (*The Municipal Corporations' Act*). The 5 & 6 W. 4, c. 76, provides that all penalties or fines payable to the Crown, or any corporation or any individual except the informer, and recoverable before borough justices under any then existing or future acts of parliament, should be paid over to the treasurer of the borough fund, except where the penalties are payable under any statute relating to the customs, excise, post-office, or trade or navigation. The 7 & 8 Vict. c. 112, to consolidate the Laws relating to Merchant Seamen, enacts that all the penalties recovered thereunder should be payable to the Merchant Seamen's Hospital Society.

Cleasby for the plaintiffs; *Crompton* for the defendants.

The Court held, that as the general tenor of the 7 & 8 Vict. c. 112, had express reference to merchant seamen and various other matters affecting navigation, the penalties were payable to the Merchant Seamen's Hospital Society under the exception in the 5 & 6 W. 4, c. 76, with respect to penalties relating to "trade or navigation." The judgment must, therefore, be given for the plaintiffs.

Prerogative Court.

(*Coram Dr. Lushington.*)

Thompson and another v. Hempenstall.
July 19, 1849.

PROBATE.—MISDESCRIPTION OF FORMER WILL.

Probate was refused to a will the contents of which did not answer to the description thereof in the testator's most recent will, although the date was referred to therein.

THE testator, G. Durant, died in November, 1844, having made several wills, one of which, executed 7th February, 1844, appointed the plaintiffs as executors. The defendant had been named a legatee in another will, dated December, 1839, and which comprised man

devises and bequests not in accordance with the will of 1844. There was another will dated in May, 1839, which referred exclusively to the Tonge Castle estate belonging to the testator, and disposed of it very differently to that of 1831. In the will of 1844, the testator revoked all his former wills and codicils, except that of December, 1831, which "related exclusively to the reversion in fee of the Tonge Castle estate."

The Court said, that according to the case of *Lord Camoys v. Blundell*, 11 Sim. 467; 1

Phill. 274; 1 House of Lords, 778, the description of a party will have more effect than a name, for a devisee might be misnamed by the testator and yet if he were recognised by the description he would take under the will. So here the will of 1839, the contents of which corresponded with the description in the will of 1844, was clearly the will referred to, although the date was wrongly given, and probate must therefore be refused to the will of 1831, and granted to that of 1844. The costs of all parties to be paid out of the real estate.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Equity.

PRACTICE.

[For the previous Sections of this Series of the Digest in the present Volume, see,—

Privy Council:

Appeals, 88.

House of Lords:

Appeals, 171.

Courts of Bankruptcy, 211.

Courts of Equity:

Law of Costs, 234.

Law of Wills, 254.

Construction of Statutes, 271.

Law of Property and Conveyancing, 293.

Pleading, 334.

Principles of Equity, 352.

Practice, p. 375.]

ABATEMENT OF SUIT.

63rd Order of May, 1845.—The 63rd Order of May, 1845, applies as well to abatements subsequent as to those previous to the date of those orders. *Williams v. Davies*, 36 L. O. 98.

AFFIDAVITS.

Evidence.—Affidavits filed in support of a special injunction cannot be read on the hearing of the motion after the answer has been put in. *Rocke v. Matthews*, 36 L. O. 271.

See *Injunction; Interrogatories; Publication.*

ALTERATION IN TITLE OF PETITION.

Affidavits.—After a petition had been presented and affidavits sworn in support of it, an addition was made to the title of the petition by the Secretary of the Lord Chancellor; on the petition coming on for hearing, such addition to the title ordered to be omitted to prevent the necessity of having the affidavits re-sworn. *Esparte Bush*, 36 L. O. 31.

AMENDMENT.

Enlarging time.—*Order of May, 1845.*—If the time within which the plaintiff,—under an order to amend, and that defendant answer the amendments and exceptions together,—is re-

quired by the 34th section of the 16th Order, and the 70th Order of May 1845 to amend, be allowed to expire, the Court cannot, of course, enlarge the time. *Dolly v. Chalkis*, 35 L. O. 482.

See *Exceptions.*

ANSWER.

1. *Master's order for further time.*—Under the usual order of the Master for further time to answer, a defendant, unless specially limited to an answer, may file a plea. *Hunter v. Noekolds*, 35 L. O. 491.

2. *Deeds.*—*Title.*—*Held*, that a defendant was bound to produce a deed which might tend to show that he was joint tenant with the plaintiff of certain lands, though he stated that the deed purported to convey to him such interest in the lands only as the conveying party was exclusively entitled to. *Attorney-General of the Duchy of Cornwall v. Lambe*, 35 L. O. 503.

3. *Time.*—*23rd Order of May, 1845.*—It is not necessary in limiting the time for answering, on the service of a subpoena out of the jurisdiction, under the 23rd Order of May, 1845, to state that the time limited is for pleading, answering, or demurring, not demurring alone. *Anon v. The Irish Great Western Railway*, 35 L. O. 538.

4. *Time.*—*18th Order of May, 1845.*—Under the 18th Order of May, 1845, a defendant applying for further time to answer must show due diligence and sufficient cause for the application, either by affidavit, or from the nature of the case, or the admissions of the plaintiff. *Brown v. Lee*, 36 L. O. 249.

ANSWER TAKEN OFF THE FILE.

The clerk to the solicitor having, without orders, signed a consent to alter the title of answers which were in the custody of the officer of the Court, after the client of his master had instructed that no indulgence should be given, the answers were on the motion of the plaintiff ordered to be taken off the file, with liberty to re-swear them. *Raistrick v. Elsworth*, 37 L. O. 155.

APPEAL.

Decree by consent.—Where a decree has

been made by consent, the parties are precluded from appealing for the purpose of procuring an issue to a jury, but are entitled to a re-hearing, if the case can be disposed of without an issue at law. *Stewart v. Forbes*, 37 L. O. 253.

See *Paying Money into Court*, 3.

ATTACHMENT.

See *Contempt*.

CONFIRMATION OF REPORT.

Consent.—Where all parties are *sui juris*, a report may be confirmed by consent, and payment of legacies ordered. *Smith v. Oliver*, 36 L. O. 488.

CONTEMPT.

1. *New attachment*.—Where a party committed for contempt in not paying costs was released by an order of a judge at chambers, made by mistake, while the contempt continued: *Held*, that the proper course was to apply for a new attachment against him. *Wigham v. Bourneman*, 36 L. O. 144.

2. *Discharge*.—A party in contempt for non-payment of money, who might have applied for discharge to the Insolvent Debtors' Court, applied to the Court of Chancery for such purpose, but the application was ordered to stand over, without prejudice. *Snowball v. Dixon*, 36 L. O. 250.

3.—*Notice*.—No notice is requisite before issuing an attachment to enforce a waiver where the time for answering has expired. But where a plaintiff, during a reference to appoint a receiver, made with a view of putting an end to the cause, issued an attachment, without previous notice, against one of the defendants, the Court discharged the attachment, and made the plaintiff pay the costs. *Serdefield v. Thacker*, 36 L. O. 310.

4. *Clerical error*.—*Writ de contumaci capiendo*.—The Court will not, upon the application of the party issuing a writ *de contumaci capiendo*, order, after the writ has been returned to the Petty Bag, that the registrar be at liberty to amend a clerical error in the *significavit* indorsed by him on the writ. Whether it will make such an order on the application of the registrar, *quære*? *Lucas v. Lawrence*, 36 L. O. 349.

See *Injunction*.

COSTS OF FIRST SUIT.

Prochein ami.—*Infant*.—The costs of a suit ordered to be taxed and paid in a second suit instituted, as it appeared, by collusion, and which stopped the proceedings in the first; and the next friend of the wife in the first, entrusted with the conduct of the second, suit. *Westby v. Westby*, 37 L. O. 555.

DECREE.

45th Order, April, 1828.—The omission in a decree of a clause, that would have been inserted by the registrar as a matter of course, under a direction for the "usual order," is a clerical omission, remediable under the 45th

Order of April, 1828. *Bird v. Heath*, 37 L. O. 32.

See *Appeal*.

DISCHARGE.

Evidence in opposition to further discharge.—Leave given to plaintiff to carry in further evidence in opposition to a further discharge taken in by consent after the Master's warrant to prepare the report had issued, although the defendant refused to consent thereto. *Shallcrop v. Wright*, 37 L. O. 317.

DISMISSING BILL.

1. *Supplemental*.—Under an order, that a bill be dismissed unless a supplemental bill be filed within a certain time, the plaintiff is bound, not only to file the supplemental bill, but to prosecute the suit effectually, under the penalty of having the original bill dismissed. *Ward v. Ward*, 36 L. O. 144.

2. Where a motion is made by one of several defendants for dismissal of the bill as against him, it is not a sufficient defence to the motion for the plaintiff to aver that the delay is occasioned by difficulties in drawing up an order made with respect to other defendants. *Jones v. Morgan*, 36 L. O. 166.

3. *Order of 13th April, 1847*.—Where the common order to amend a bill is obtained, but not served until the defendant has served a notice of motion to dismiss for want of prosecution: *Held*, that the order to amend was of no effect, and the defendant entitled to dismiss with costs. *Jones v. Lord Charlemont*, 36 L. O. 166.

EVIDENCE.

See *Affidavit*; *Discharge*.

EXCEPTIONS TO ANSWER.

Amended bill.—On exceptions to an answer, where the original bill has been amended, the reference should be of the bill and answer generally, and not of the original bill only. *Watson v. Life*, 37 L. O. 472.

HEARING, POSTPONEMENT OF.

Counsel.—The Court refused, without the consent of the opposite counsel, to postpone the hearing of the conclusion of the argument on account of attendance of counsel at the House of Lords. *Sharpe v. Arbuthnot*, 37 L. O. 377.

INFANT.

1. *Next Friend*.—*Staying proceedings*.—All further proceedings stayed in an infant's suit, though ready for hearing, and reference made to the Master to appoint a guardian and approve of an allowance for maintenance. *Biggs v. Naylor*, 37 L. O. 52.

2. *Guardian ad litem*.—On an affidavit verifying the birth of an infant, and that it would be prejudicial to remove it, the Court will appoint a guardian *ad litem* without seeing the child. *Stately v. Harrison*, 37 L. O. 513.

See *Costs*.

INJUNCTION.

1. *Contempt*.—An injunction restraining A. from doing certain acts, did not in terms ex-

tend to A.'s agent or servant. B., a servant of A., having done acts which A. was enjoined not to do, *Held*, that a motion could not be directly made to commit B. for a breach of the injunction; but *Seemle*, that B. might be committed for his contempt of the Court in assisting A. to commit a breach of the injunction. *Lord Wellesley v. Lord Mornington*, 36 L. O. 209.

2. *Affidavits*.—*Copyright*.—Where a work complained of as being a breach of copyright in a certain publication, was published under an impression that there was no copyright in that publication, and after that question had been decided in the affirmative, the publication was justified on the ground that there was substantially no breach of copyright, the Court restrained the publication of the work, pending an action to try whether there was a breach of copyright or not. *Cocks v. Purday*, 37 L. O. 94.

3. *Copyright*.—Motion refused, to discharge an order to take the bill *pro confesso*, on the ground that certain facts had been suppressed. *Yearsley v. Budgett*, 37 L. O. 293.

4. *Watermill*.—Where a plaintiff has not applied for an injunction within a reasonable time after the occurrence of the act complained of, the Court will not interfere in a summary way by injunction, but will leave him to his remedy at law. *Lay v. Hortridge*, 37 L. O. 318.

5. *Suppressio veri*.—An injunction restraining a pawnbroker from selling certain valuable articles was dissolved, on the ground that the plaintiff had suppressed the material facts of the agreement to sell, and notice of sale. *Fitch v. Rockfort*, 37 L. O. 451.

See *Patent*.

INTERPLEADER.

Injunction.—Course of proceeding where foreign claimants require time to answer before issue to try the rights of the parties. *East and West India Dock Company v. Littledale*, 37 L. O. 214.

INTERROGATORIES.

Affidavits.—A party who consents to proceed upon affidavits before the Master, does not hereby lose his right to enforce an answer to interrogatories. The notice should be given of his intention to exercise that right before he uses it. *Attorney-General v. Corporation of Chester*, 36 L. O. 328.

IRREGULARITY.

Waiver.—An answer and demurrer cannot be filed whilst the defendant is in contempt, and the irregularity is not waived by the plaintiff's taking an office copy. *Attorney-General v. Shiel*, 37 L. O. 432.

MARRIED WOMAN.

1. *Evidence of identity*.—Where a bequest is made to a married woman whose husband dies after the institution of a suit for administering the testator's estate, and she marries again, it is necessary, on an application to have the bequest paid to her, to adduce evidence of the death of the first husband and of her identity,

although the name of the second husband may have been introduced into the proceedings in the cause. *Edwards v. Winkworth*, 35 L. O. 520.

2. Notwithstanding the consent of all other parties to an allowance for the maintenance of an infant, a *feme covert* who has a contingent interest cannot consent. *Cavendish v. Mercer*, 5 Ves. 195, overruled. *In re Dawson*, 37 L. O. 434.

See *Payment of money out of Court*, 1.

MISTAKE.

Name.—Evidence on which the Court corrected an error in the name of a party in an order for the payment of a sum of money out of Court without a reference to the Master, although the error extended to the previous pleadings. *Dowding v. Bartlett*, 36 L. O. 117.

NOTICE.

See *Contempt*.

ORDER VARYING FROM NOTICE.

Application for time is not an appearance.—An order made upon affidavit of the service of notice of motion, must not vary from the terms of the notice, even though less than what asked for, if such variation be more prejudicial to the other side than what was asked. *Hutton v. Hepworth*, 37 L. O. 53.

PATENT.

1. *Sci. fa.*—*Injunction*.—This Court will not interfere with the discretion of the Attorney-General, as to allowing the prosecution of a *sci. fa.* to set aside letters patent, upon the ground of objections to the legal right of the prosecutor to obtain the writ, not affecting his conduct in obtaining or prosecuting it. *Quinn v. Prosser*, 37 L. O. 133.

2. *Validity*.—The Court will not interfere with the discretion of the Attorney-General on the part of the Crown, in regard to security of costs for the prosecution of a *sci. fa.* to try the validity of a patent. *Attorney-General v. Prosser*, 37 L. O. 316.

PAUPER EXECUTRIX.

Suit for redemption.—*Life estate*.—Where a redemption suit is instituted by an executrix entitled to an estate for life in the equity of redemption of certain property on mortgage, she will not be allowed to prosecute the suit *in forma pauperis*. *Fowler v. Davies*, 36 L. O. 145.

PAYING MONEY INTO COURT.

1. *Investment on Master's certificate*.—Where trust money is invested in land under an order of the Court, and the property is subject to a mortgage, which is to be paid out of the purchase money, the order for payment of the purchase should be upon the Master's certifying that the conveyance has been executed by the mortgagee and all proper parties. *Thellusson v. Woodfall*, 35 L. O. 559.

2. *Trust fund*.—The Court refused to make an order against four trustees to pay into Court a trust fund admitted by the answer to have been at one time in their joint possession, but

ated to have been many years since received by one of them only, though it appeared to have been applied by him in a way which amounted to a breach of trust. *Fussell v. Auger*, 36 L. O. 52.

3. *Variance of order from notice.*—*Hearing original motion.*—An order for payment of money into Court obtained on affidavit of service must not vary from the terms of the notice of motion.

If one part of an appeal motion is dismissed the Lord Chancellor will not entertain another part which is in the nature of an original motion. *Major v. Major*, 37 L. O. 94.

PAYMENT OF MONEY OUT OF COURT.

1. *Married woman.*—*Abandonment of wife by husband.*—Where a husband had abandoned his wife in the year 1834, and had not since the year 1835 been heard of, *Held*, that a sum of money in Court to which the wife had become entitled, might be paid out to her on her sole receipt. *Blake v. Mulinger*, 35 L. O. 521.

2. *Trust fund.*—10 & 11 Vict. c. 96.—Where a petition is presented under the 10 & 11 Vict. c. 96, for the purpose of obtaining payment of the dividends of a trust fund, which had been transferred by the trustee into Court, it is not necessary to serve the trustee with the petition. *Ex parte Martin*, 35 L. O. 561.

3. Authority on which the Court will allow the solicitor of a party to receive small sums exceeding 10*l.* *Ex parte Stevens*, 36 L. O. 284.

PRO CONFESSO.

Upon an application for an order to take a bill *pro confesso*, the Court requires evidence of due diligence in the execution of the writ of attachment, as well as a return of *non est inventus*. *Yearsley v. Budgett*, 36 L. O. 488.

PRODUCTION OF DOCUMENTS.

1. *Title.*—*Admission.*—In order to support a motion for the production of documents, the plaintiff must be able to produce a distinct admission of his title by the defendant against whom he moves. It is not sufficient to show that he does not deny the title. *MacHardy v. Hitchcock*, 35 L. O. 608.

2. An admission that papers had come into the hands of A. as solicitor for certain trustees, will not justify an order for their production against the representatives of the surviving trustee. *Walker v. Dewbury*, 37 L. O. 52.

PUBLICATION, ENLARGEMENT OF.

Affidavit.—Plaintiff having unsuccessfully applied to the Master for an enlargement of publication, applied by motion to the Court for the same purpose: *Held*, that affidavits filed since the hearing before the Master might be read on such motion. *Peel v. Hague*, 37 L. O. 31.

REPORT.

See *Confirmation*.

SALE OF TIMBER.

Circumstances wherein the Court will allow

exceptions to the Master's report relating to the sale of timber. *Lockhart v. Alder*; *Same v. Crouch*, 37 L. O. 416.

SERVICE OUT OF THE JURISDICTION.

Conditional appearance.—The proper time for a defendant, served under the 33rd Order of May, 1845, to complain of the place where the suit is brought against him, is after answer.

The Court refused to allow a conditional appearance to be entered in Court with the Registrar. *Lewis v. Baldwin*, 36 L. O. 187.

SERVICE OF COPY OF BILL.

23rd and 24th Orders of August, 1841.—The affidavit of service of the copy of the bill under the 23rd order of August, 1841, on the motion for leave to enter the memorandum of service under the 24th order, need not show that in the copy served the interrogatory part was omitted. *Mason v. Best*, 37 L. O. 239.

SUBPŒNA.

Insertion of name in subpœna not resealed.—Serving a subpœna without having it resealed after another name has been inserted, if not a contempt of Court, is a great abuse of its practice; and an order founded on proceedings connected with the service of such subpœna will be discharged with costs. *Tipping v. Coates*, 37 L. O. 607.

SUBSTITUTED SERVICE.

Order to substitute service (reversing the decision of Vice-Chancellor Wigram), of a bill of revivor upon the solicitor in the original suit. *Norton v. Hepworth*, 37 L. O. 415.

TIME.

See *Amendment*; *Answer*.

TRAVERSING NOTE.

Service.—The Court will order personal service of copy of traversing note upon a defendant who is within its jurisdiction, but who does not defend either by a solicitor or in person. *Moss v. Buckley*, 36 L. O. 208.

WAIVER.

See *Irregularity*.

WITNESSES.

1. *Out of the jurisdiction.*—On a motion for a commission to examine witnesses out of the jurisdiction, it is not necessary that the affidavit in support of the motion should specify the names of the witnesses, or that it should be made by the solicitor of the party moving. *M Hardy v. Hitchcock*, 36 L. O. 118.

2. *Re-examination.*—Statements were contained in a bill, and a witness had given his evidence generally as to certain acts of waste having been committed in and after the year 1809: *Held*, that the witness might be re-examined particularly as to the facts of the same acts of waste having been committed previously to 1809. *Duke of Leeds v. Lord Amherst*, 37 L. O. 212.

BUSINESS OF THE COURTS.

CHANCERY SITTINGS.

AT LINCOLN'S INN.

Lord Chancellor.

Michaelmas Term, 1849.

Friday . . . Nov. 2	Appeal Motions.
Saturday . . . 3	{ (Petition-day) Petitions and Appeals.
Monday . . . 5	
Tuesday . . . 6	Appeals.
Wednesday . . . 7	
Thursday . . . 8	{ Appeal Motions and Appeals.
Friday . . . 9	{ (Petition-day), Petitions, (unopposed only) and Appeals.
Saturday . . . 10	
Monday . . . 12	
Tuesday . . . 13	Appeals.
Wednesday . . . 14	
Thursday . . . 15	{ Appeal Motions and Appeals.
Friday . . . 16	{ (Petition-day), Petitions, (unopposed only) and Appeals.
Saturday . . . 17	
Monday . . . 19	
Tuesday . . . 20	Appeals.
Wednesday . . . 21	
Thursday . . . 22	{ Appeal Motions and Appeals.
Friday . . . 23	{ (Petition-day), Petitions, (unopposed only) and Appeals.
Saturday . . . 24	Appeals.
Monday . . . 26	{ Appeal Motions and Appeals.

Vice-Chancellor of England.

Friday . . . Nov. 2	Motions.
Saturday . . . 3	Petition-day
Monday . . . 5	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday . . . 6	
Wednesday . . . 7	
Thursday . . . 8	Motions.
Friday . . . 9	{ (Petition-day), Petitions, (unopposed first,) Short Causes, and Causes.
Saturday . . . 10	
Monday . . . 12	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday . . . 13	
Wednesday . . . 14	
Thursday . . . 15	Motions.
Friday . . . 16	{ (Petition-day), Petitions, (unopposed first,) Short Causes, and Causes.
Saturday . . . 17	
Monday . . . 19	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday . . . 20	
Wednesday . . . 21	
Thursday . . . 22	Motions.
Friday . . . 23	{ (Petition-day), Petitions, (unopposed first,) Short Causes, and Causes.
Saturday . . . 24	
Monday . . . 26	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.

Vice-Chancellor Knight Bruce.

Friday . . . Nov. 2	Motions.
Saturday . . . 3	Bankrupt Petitions.
Monday . . . 5	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday . . . 6	
Wednesday . . . 7	{ Bankrupt Petitions and Causes.
Thursday . . . 8	Motions.
Friday . . . 9	{ (Petition-day) Petitions and Causes.
Saturday . . . 10	Short Causes and Causes.
Monday . . . 12	{ Pleas, Demurs., Exceptions, Causes, and Fur. Directions.
Tuesday . . . 13	
Wednesday . . . 14	{ Bankrupt Petitions and Causes.
Thursday . . . 15	Motions.
Friday . . . 16	{ (Petition-day) Petitions and Causes.
Saturday . . . 17	Short Causes and Causes.
Monday . . . 19	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday . . . 20	
Wednesday . . . 21	Bankrupt Petitions.
Thursday . . . 22	Motions.
Friday . . . 23	{ (Petition-day) Petitions and Causes.
Saturday . . . 24	Short Causes and Causes.
Monday . . . 26	Motions.

Vice-Chancellor Stirlingham.

Friday . . . Nov. 2	Motions and Causes.
Saturday . . . 3	{ (Petition-day), Petitions & Causes.
Monday . . . 5	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday . . . 6	
Wednesday . . . 7	
Thursday . . . 8	Motions and ditto.
Friday . . . 9	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Saturday . . . 10	{ Short Causes, Petitions, (unopposed first,) and Causes.
Monday . . . 12	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday . . . 13	
Wednesday . . . 14	
Thursday . . . 15	Motions and Ditto.
Friday . . . 16	{ Pleas, Demurrers, Exceptions, Causes, and Fur. Dir.
Saturday . . . 17	{ Short Causes, Petitions, (unopposed first,) and Causes.
Monday . . . 19	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday . . . 20	
Wednesday . . . 21	
Thursday . . . 22	Motions and Ditto.
Friday . . . 23	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Saturday . . . 24	{ Short Causes, Petitions, (unopposed first,) and Causes.
Monday . . . 26	Motions and Causes.

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SATURDAY, SEPTEMBER 29, 1849.  
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THE PRACTICE OF RETAINERS.

COMMENTARY ON THE NEW RULES.

It is matter of much congratulation to learn, that the rules of practice relating to retainers, collected and published by the Incorporated Law Society in Michaelmas Vacation last, appear to be generally approved and adopted. They comprise not only a statement of the practice as it has long and generally prevailed, but they relate to numerous important questions upon which disputes were frequently arising, and which are now, it is trusted, satisfactorily settled by the rules. The old practice which in several respects it had been recently attempted to alter, has been restored, and several objectionable regulations which worked injustice to the client, inconvenience to the practitioner, and discredit to the bar, have been corrected.

It is satisfactory to know, that the most important of those amendments in the recent practice, or restorations of former rules, are in accordance with the opinions expressed by Lord Eldon, Lord Langdale, and Sir Samuel Romilly, as well on the actual practice in their time, as on the principles which ought to govern the practice. The alterations or reforms are also mainly in unison with the opinions propounded by the late eminent and learned editor of the *Law Magazine*. We have thus before us as witnesses, the representatives of the Bar both in the last and the present age. In the following commentary on the rules, we shall notice the opinions we refer to, under their appropriate heads :

1st. Of General Retainers.

1, 2. It was the established practice that a general retainer applied to all Courts in which the counsel receiving it usually practised, but it was doubtful whether it applied

to other Courts, and entitled the party giving such general retainer to receive notice before an adverse special retainer could be accepted. The first rule therefore states the ordinary practice, and the second removes the former doubt, and provides that notice shall be given.

3. The duration of the general retainer for the joint lives of the client and counsel is stated in the third rule according to the established practice. We are not aware that any question has arisen upon this well-understood rule, and no alteration has been suggested.

4. The old practice allowed a special retainer to follow the general retainer at any time ; and in the *Law Magazine*, (vol. iv. p. 417,) the rule is thus laid down, "That when a general retainer has been given, a special retainer, if ever required at all, at least should not be called for until a suit has been actually commenced." It was, deemed right, however, towards the Bar, that the client should give the special retainer within a limited time after the commencement of an action ; accordingly the 4th rule requires that such special retainer shall be given within one week after issue joined [at law] or replication filed [in equity].

5. Much doubt existed regarding the cases in which it ought to be held that the general retainer was either partially or wholly lost by the non-delivery of a brief in any action or suit wherein the client was a party. Many practitioners held, that the omission to deliver a brief worked only a forfeiture of the retainer in the particular cause, not in others. But an equal number were of opinion, that the general retainer bound the client to employ the counsel in all cases whatever. The fifth rule which has been adopted, steers a middle course ;

* See p. 366, *anté*.

the general retainer will be entirely lost, unless in cases where a brief is given to a junior counsel only, and the services of the retained counsel appear unnecessary to the retaining solicitor.

This appears to be a just ground of distinction,—saving the client from needless and improper expense, and affording a fair opportunity of public advocacy to the junior Bar.

6. The sixth rule merely states the existing practice without amendment, namely, that where a general retainer is given for one person, and he is sued with others, and defends separately, the retainer is binding, but not if he defend jointly.

The following are the rules as to general retainers.

1. That a general retainer applies to all Courts in which the counsel receiving it shall practise.

2. That if the counsel should be offered a special retainer by the opponent of the party having given such general retainer, in any other Court than that in which he shall usually practise, the general retainer entitles the party giving it, to notice before the offered retainer is accepted.

3. That the general retainer lasts for the joint lives of the client and counsel, or so long as the counsel continues in practice, except it be lost, according to any of these rules.

4. In case a special retainer or brief is offered to counsel against the party who has given a general retainer, the counsel is at liberty to accept the special retainer or brief of the party, unless within one week after issue joined, or replication filed, a special retainer or brief be given by the party who gave the general retainer.

5. Where a general retainer has been given, and a brief is not delivered to the retained counsel in any action, suit, or other proceeding, in which the party giving the general retainer is concerned, (and pending in the Court wherein the counsel usually practises,) the general retainer is entirely lost, unless in cases where a brief is given to a junior counsel only, and the services of the retained counsel appear unnecessary to the retaining solicitor.

6. Where a general retainer is given for one person, and he is sued with others, and he defends separately, the retainer is binding; but it is otherwise if he defend jointly.

2nd. Of Corporation and Partnership Retainers.

7, 8. It was doubtful whether any change in a corporate body or private partnership, though the alteration might be of the slightest kind, did not vitiate the effect of the retainer, and entitle an adverse party to insist upon the acceptance of his retainer

without notice to the first client. There appears to have been no intention whatever to abridge the number or amount of retaining fees, but merely to secure to the first client such information as will enable him to follow the general retainer by a special one. The doubts on this subject are settled by providing, under the 7th and 8th rules, that the retainer holds good unless the corporation be dissolved, or a new charter granted, or there be a change in the style or firm of the partnership.

9. A new rule has been suggested, extending the practice of corporation and partnership retainers to provisional committees. According to the previous practice, such general retainers must have been given with all the names of the committee, and in case of the omission of any one name, or the addition of another, the retainer would be inoperative. Such retainer would, rarely, if ever, be given, unless the 9th rule be adopted by the bar.

This section of the rules is as follows:

7. Subject to the foregoing rules, a general retainer given for a corporation will continue, unless the corporation be dissolved, or the grant of a new charter be accepted.

8. When a general retainer is given for a partnership or firm, it continues so long as the style of the partnership or firm continues, and extends to all matters affecting the partnership, notwithstanding all the partners may not be included in the action or actions brought.

9. A general retainer may be given for a provisional committee in respect of any subject of action or suit by or against such committee, or any member or members of it, arising out of the concern in which they are provisional committee-men.

3rd. Of Special Retainers.

10. According to the well-known practice, a special retainer might be given before the commencement of an action at law, but it could not be given before filing a bill in equity, and probably not in bankruptcy till a fiat was actually issued; and the mischief was, that an adverse retainer must be accepted without notice.

The 10th rule renders the practice in equity and bankruptcy uniform with that at law.

11. There was a conflict of practice regarding special retainers in all cases, as applied to interlocutory motions before the Court. At common law it was understood the retainer applied only to trials, and no inconvenience arose, not unfrequently, when an application was made to the Court involving wholly or partly the question to be afterwards tried. These applications were, by some of the counsel's clerks, considered

• The alterations or modifications in the Rules are printed in Italics.

and distinct from the trial, and requiring a separate retainer. Otherwise an advocate who obtained a rule absolute to-day, might to-morrow apply to rescind it, manifestly to the discredit of the Court who allowed such ambidexterity, and to the counsel who was compelled to plead against his own previous arguments, and to outrage his sense of truth and consistency. In equity the rule was different: there the retained counsel was entitled to a brief on every occasion when the case was before the Court, except on motions of course, and if not delivered, the retainer was wholly lost, and the adversary might, without notice, deprive the first client of his best counsel, and who knew all the secrets of the cause. The 11th rule renders the practice uniform both in law and equity, and gives the client a right to the services of the counsel during the whole progress of the cause, including bills of exception (at law,) and re-hearings (in equity.)

12. Bar by the 12th rule, the interests both of the client and the junior Bar are protected, by enabling the solicitors to dispense with the services of the leader, when those of the junior only appear to be necessary.

The rules on special retainers are these:

10. A special retainer may be given as well before, as after, the commencement of an action at law, a suit in equity, or a proceeding in bankruptcy.

11. A special retainer gives the client a right to the services of the counsel during the whole progress of the cause, including interlocutory applications, and bills of exception and re-hearings.

12. The retained counsel is entitled to a brief on every occasion in which the case is brought before the Court in which he usually practices, except where the services of the junior counsel only appear to the retaining solicitor necessary.

4th. Of Circuit Retainers.

13. This rule merely repeats the established practice "that a special retainer in a country cause must be given for a particular assize."

14. This rule states the practice "on which there was, but ought not to have been, a doubt, namely, that the change of venue from one county to another on the same circuit does not require a fresh retainer."

15. This rule adopts the old practice that "if the cause be not tried at the assizes for which the retainer is given, it must be renewed for every subsequent assize."

16. It was supposed that a retainer could

not be given for any future assizes without a retainer for the intervening assizes. The 16th rule settles this doubt, dispensing with the intervening retainer, unless notice of trial shall be given.

17. There was also a doubt, and variances in practice on different circuits, regarding the time when the renewed retainer should be given. The 17th rule requires it to be delivered before the end of the term preceding the assizes.

18. But if not given, an adverse retainer cannot, by the 18th rule, be accepted without notice to the original client.

The rules in this branch are as follow:

13. A special retainer in a country cause must be given for a particular assize.

14. If the venue be changed for another place on the same circuit, a fresh retainer is not required.

15. If the cause be not tried at the assizes for which the retainer is given, the retainer must be renewed for every subsequent assize until the cause is disposed of, unless a brief has been delivered, and then the usual refresher fee is sufficient.

16. A retainer may be given for future assizes, without a retainer for the intervening assizes, unless notice of trial shall have been given for such intervening assizes.

17. Where a renewed retainer is necessary, it must be given before the end of the term preceding the assize.

18. In any case requiring the renewal of a retainer, an adverse brief or retainer cannot be accepted without notice to the original client."

5th. Of Appeals, Writs of Error, and Nonsuits.

19, 20, 21. The rules on this subject correct a great and manifest evil in the former practice which in the Courts of Equity was at variance with the Common Law Courts. It was said that a retainer in support of an appeal could not be given until the appeal was lodged, and that counsel in the original cause could not refuse a retainer for the opposite side, but were bound to accept it without notice to the client in the original cause. Thus, counsel who had obtained a decree, were compelled on an appeal to use their best endeavours to reverse it, and could scarcely fail to recollect the weak parts of their former client's case. On writs of error in the Common Law Courts, it was otherwise. But after a nonsuit it was in the power of the opposite party to retain the plaintiff's counsel in the second action, without notice to his client in the first. These manifest acts of injustice to the client, and of scandal and disgrace to the practice of the Courts, are by the 19th,

20th, and 21st rules, prevented in future. No retainer against the original client can be accepted on appeals or writs of error, which are indeed but the continuance of a cause; and so on nonsuits, a retainer cannot be accepted in the second action without notice to the client in the first.

The following are the rules :

"19. *A special retainer, in an appeal or on a writ of error, may be given before the appeal has been lodged or the writ of error issued.*

"20. *Counsel in the original cause cannot accept a retainer on an appeal or writ of error for the opposite party, without affording the client in such original cause the opportunity of giving such retainer.*

"21. *After a nonsuit, a retainer cannot be accepted from the adverse party in a second action, without notice to the client for whom a brief has been held in the first action.*"

6th. Of Opinions and Pleadings.

22. Although the Courts have always declined to interfere on retainer questions, some valuable *obiter dicta* have been expressed by eminent judges. Thus, Lord Eldon said, "The practice of the bar in my time was this: if a retainer was sent by a party against whom the counsel had been employed, the retainer being in a cause between the same parties, the counsel, before accepting it, sent to his former client, stating the circumstance and giving him the option."^b

Sir Samuel Romilly said, "I conceive that a counsel, consulted confidentially, cannot be counsel on the opposite side *without giving notice*. Great laxity, I admit, prevails as to retainers; a difficulty when it occurs is usually referred to some other counsel, and the consequence is, that there is *no general rule*."

On the other hand, it was contended by Mr. Basil Montagu,^c that a counsel who has drawn pleadings or advised on a case in contemplation of an action or suit, but who is not formally retained, is bound to accept the retainer or brief of the opposite party *without notice*. The most modern authority on the subject will be found in the *Law Magazine*,^d which accords with that of Lord Eldon and Sir Samuel Romilly, and we think the rule there contended for is the only one

consistent with justice and honour. Let it be recollected that an attorney is not permitted — even when discharged by his client — to act professionally against him; neither ought counsel to plead against his former client unless upon due notice he declines to give or renew the retainer. In another case, *Baylis v. Groat*, 2 Myl. & K. 316, Lord Langdale, then at the bar, said, "If any rule could be held to be clear and reasonable, it was where a counsel had by reason of the part he had taken in a particular suit, possessed himself of a knowledge of the case of the party for whom he had previously acted."

The 22nd rule, in accordance with these high authorities, requires notice to be given to the first client, in order that he may give a retainer if he think proper.

The rule is thus expressed :—

"22. *Where counsel has drawn pleadings or advised, during the progress or in contemplation of an action or suit, a retainer cannot be accepted from, or pleadings drawn for, or advice given to, the opponent, without notice to the first client.*"

7th. Of the Promotion of Counsel.

23. It was considered doubtful whether the promotion of counsel to a higher rank at the bar had the effect of terminating the retainer. The 23rd rule declares that,—

"23. *The retainer of counsel does not cease upon his being promoted to a higher rank at the bar.*"

It must follow, of course, that whilst the counsel cannot accept a brief from the opposite party, so his own client is bound to deliver him a brief, or the retainer will be forfeited; and then he may accept an adverse brief without notice.

8th. Of the Form of the Retainer and Notice.

24. It has been generally held, that the counsel for *A.* against *B.* was bound to accept a retainer for *B.* against *A.*, in a cross action. Where the causes of action are connected, the 24th rule provides for notice before accepting the second retainer.

25. The slightest mistake in the title of an action rendered the retainer inoperative. It is stated by the writer in the *Law Magazine*,^d that "a retainer ought not to be invalidated by any merely formal change, whether in the name or mode of proceeding, whilst the cause remains in substance the same." It is now by the 25th rule provided, that if it can be shown that the cause

^b *Earl Cholmondeley v. Lord Clinton*, 19 Ves. 261. Lord Eldon, indeed, went so far as to say that "if counsel knew anything that might be prejudicial to the former client, he ought not to accept the new brief, though that client refused to retain him."

^c See p. 345, *ante*; Montagu's Bankruptcy Cases, p. 69.

^d See p. 366, *ante*, & *Law Magazine*, 417.

^e See p. 366, *ante*; & *Law Mag.* 417.

of action, as, suit, in the same, and, that there is no other to which the retainers can apply, it shall prevail.

26. To prevent misunderstanding, it is by the 26th rule explained, that the notice to the client mentioned in the rules is intended to afford an opportunity of giving a special retainer. Objection has been taken to the duty thrown upon the Bar of giving notice to the former client on the tender of an adverse retainer or brief. It has been supposed that such notice savoured of an application for a fee; but even Mr. Montagu does not object to the principle of giving notice. Quoting Sir Samuel Romilly's words, that "Retainers to your enemies and; briefs to your friends, was a disgraceful proceeding, which ought to be resisted," Mr. Montagu says, "there is not in *this case* any courtesy which requires notice to be given that a brief is sent by the opposite party: the only difficulty is of discovering the fact of the *intention* with which the retainer is delivered,"—admitting evidently that a *bona fide* retainer entitles the giver to notice.

The following are the terms of the three rules referred to:—

"FORM OF RETAINER.—NOTICE.

"24. When a retainer is given by the plaintiff in a cause A. v. B., and an action or suit is afterwards brought by B. v. A., the counsel cannot take the retainer of B. without notice to A., if the causes of action are connected.

"25. A mistake in the title of an action or suit does not render the retainer inoperative, if it can be shown that the cause of action or suit is the same, and that there is no other to which the retainer can apply.

"26. The notice to the client mentioned in these rules is intended to afford him an opportunity to give a special retainer to counsel."

9th. Of the Amount of the Fees.

27, 28. There appears to be no question raised in regard to the amount of the fees payable on the several kinds of retainers. The last two sections set them forth according to the well-known usage. They are as follow:—

"27. The fees given for general retainers are as follow:—

In the Courts of Queen's Bench, Common Pleas, and Exchequer of Pleas, 5*l.* 6*s.*

In Chancery and Bankruptcy Appeals, 6*l.* 5*s.*

In Bankruptcy, 5*l.* 5*s.*

In Parliament, 10*l.* 10*s.*

In the Privy Council, 10*l.* 10*s.*

"28. The fees given for special retainers are as follow:—

At Common Law and Equity, 1*l.* 1*s.*

In Parliament, on Bills and Election Committees, 5*l.* 6*s.*

In Appeals to the House of Lords, 2*l.* 2*s.*
In the Privy Council, 2*l.* 2*s.*

It is due to the Incorporated Law Society, (before we conclude,) briefly to describe the extraordinary pains they have taken to ascertain the existing practice, the many doubts arising out of it, and the labour they have bestowed in collecting information regarding the cases of injustice and inconvenience to which the suitors and their solicitors have been subjected.

We are informed that upon receiving several complaints of the unsettled state of the practice, the Committee of Management in 1839 addressed letters to all the Members of the Society, requesting the communication of the doubts and difficulties which had occurred to them in the course of their practical experience. In answer to the circular, the Committee received a considerable amount of information. They pursued their inquiries, and subsequently received valuable assistance from the clerks of the then Attorney and Solicitor-General. Instances accumulated from time to time in the course of several years; and at length, in the year 1846, the grievance became so serious that the Council of the Society felt it to be their duty to use their exertions in bringing about a settlement of the various questions which had been brought before them. The subject was very frequently considered by the Special Committee and by the Council, and in January, 1847, a circular was addressed to every solicitor practising in London, accompanied by a series of questions on the several points upon which any difference of opinion existed.

These specific questions produced a very large mass of information, which may be considered almost equal to the result of a long examination of numerous witnesses, who being practitioners of great experience, were fully competent to give the most valuable testimony. The depositions, as it were, of nearly 150 solicitors, fill a large volume, and another volume has been compiled containing an analysis of the statement of each witness, classified according to the several departments of the subject. From the materials thus laboriously collected, the Council of the Society prepared the *proposed* rules, and submitted them to the judges of all the Courts, to the benchers of all the Inns of Court, and to the leading members of the Bar. This step was taken in May, 1847, and but few answers having been received, a second letter was written in July to the Attorney and Solicitor-General, and all the

Queen's Counsel and Serjeants. Amendments and corrections having been received from two eminent leading counsel, the proposed rules were revised, and in order to avoid the danger of mistake, the Council at the end of Michaelmas Term, 1847, again addressed the Attorney-General, requesting to be favoured with the sentiments of the Bar on the proposed rules, with a view to their settlement before the next Term.

No further objections or observations having been received, the revised rules were sent in April, 1848, to the solicitors practising in London, to the secretaries of the several Provincial Law Societies, and to every Member of the Incorporated Law Society, inviting their further sentiments on the rules so revised. In reply to this last circular, some further suggestions were received and carefully considered; and a Special General Meeting of the Incorporated Law Society was convened on the 29th November, 1848, at which the rules were adopted, and the following resolutions passed:—

"1. That it is highly expedient that the present uncertain and variable usage relating to the retainers of counsel should be reduced to certainty, by the establishment of a series of intelligible rules, whereby the interests of the suitors, and the convenience of both branches of the profession may be consulted and secured.

"2. That the rules of practice now read are fair and equitable, and calculated to promote those important objects, and that they be approved and adopted.

"3. That the members of the society now present engage to adhere strictly and invariably to such rules of practice in the retainer of counsel, and that such members do signify their adhesion by inserting their names in the book now produced for that purpose.

"4. That all absent members of this society, and attorneys and solicitors in general, be earnestly invited to adopt the rules, and sign the book before referred to, and that such book do lie in the office of the secretary for the purpose of receiving signatures.

"5. That in case of any difference of opinion regarding the construction of such rules, or the practical application thereof, in any case occurring between members of the society, the question be stated in writing, and submitted to the determination of the Council of the society, whose decision shall be final.

"6. That in case of any such difference between attorneys and solicitors, not being members of the society, they be recommended to consent to refer the matter in difference either to one of the Taxing Masters of the Superior Courts of Law or Equity, or to the Council of this society, and in all such cases to abide by the decision.

"7. That these resolutions, together with

the report of the Council on this day made to the society, be printed, and that copies of each of these documents, and of the rules adopted, be sent to the Judges of the Superior Courts, to the Attorney-General, the Solicitor-General, the Queen's Serjeants and Queen's Counsel, the Serjeants-at-Law, the Benchers of the several Inns of Court, to each Member of this Society, and to the Metropolitan and Provincial Law Societies.—And that the Council be requested to take such further measures as they deem requisite to procure assents to the rules."

We trust these statements and explanations will remove any misunderstanding on the part of such members of the profession in any of its branches, as may have supposed that due pains were not taken, and due respect not shown to the Bar, in collecting and publishing these rules of practice.

NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

[The Statutes of this Session printed in the last and the present Volumes, are as follow:—

- Buckingham Assises, vol. 37, p. 408.
- Inclosure of Commons, vol. 37, p. 402.
- Appointment of Overseers of Poor, vol. 37, p. 448.
- Law of Larceny Amendment, vol. 37, p. 471.
- Annual Indemnity, vol. 37, p. 489.
- Petty Sessions in Counties and Boroughs, p. 78, ante.
- Maintenance of Poor out of Workhouses, p. 101, ante.
- Costs of Distraining for Highway Rates, p. 127, ante.
- Defective Powers of Leasing, p. 187.
- Sheriff of Westmoreland, p. 220, ante.
- Passengers' Regulation, p. 239.
- Relief of Poor in Cities and Boroughs, p. 252.
- Small Debts, p. 280.
- Bankruptcy Law Consolidation Act, pp. 297, 317.
- Joint-Stock Companies Winding-up Amendment Act, 1849, p. 340.
- Inclosure of Commons Extension, p. 361.
- Quarter Sessions Courts Procedure Act, p. 379.
- Sequestrators' Remedies, p. 401.
- Further Relief of Trustees, p. 402.
- Defects in Leases Acts Suspension, p. 403.
- Allowances on Purchase of Stamps, p. 403.
- Second Inclosure of Commons Act, 1849, p. 403.
- County and Police Rates, p. 404.
- Highway Rates, p. 405.
- Exemption of Stock in Trade from Poor Rate, p. 405.

UNION OF TURNPIKE TRUSTS.

12 & 13 VICT. c. 46.
It has been deemed expedient for the better and most economical management of

Turnpike Trusts, that all which can be conveniently managed together should be united, where the same can be effected without injury to the creditors of such trusts.

The present act, therefore, provides that the trustees of two or more turnpike roads may hold joint meetings, and if deemed expedient to two-thirds of the trustees present, the trusts may be united, subject to the assent of three-fifths in amount of the creditors.

The United Trust is to be subject to the liabilities, and entitled to the tolls of each trust so united. s. 2.

The special provisions in the General Turnpike Acts are to apply only to the particular roads. s. 3.

The present act is not to affect the rights of persons to offices held under any Turnpike Trusts. s. 4.

The meetings of the United Trusts are regulated by section 5, and the act is not to extend to Scotland or Ireland. s. 6.

The following are the enactments:

An Act to facilitate the Union of Turnpike Trusts: (26th July, 1840.)

1. That where the general annual meetings of the trustees of two or more turnpike roads have for three years next preceding such notice as next hereinafter mentioned been held at the same place, or at places distant not more than ten miles from each other, two or more of the trustees of each of such roads may call a joint meeting of the trustees of such several roads, at a place to be specified in the notice of such meeting, for the purpose of taking into consideration a proposition for the union of the trusts of such several roads, of which meeting and of the purpose thereof twenty-one days notice shall be given, in like manner as notice of the general annual meeting of the trustees of such respective roads is by law required to be given; and if at such meeting it shall appear to a majority, being not less than two-thirds of the trustees of each of the trusts so proposed to be united then present, that such union is expedient, and that the same can be effected without injury to the interests of any of the creditors of any of the said trusts, the said trustees may resolve to unite the same, and shall in such case, within twenty days after such meeting, send notice of such resolution, together with a report of the reasons for which the said union is considered by them expedient, and a statement of the income and expenditure of all the trusts proposed to be so united, and of the debts of every such trust, to all the creditors of the same, such notice and report to be delivered at the usual place of abode of every such creditor, or at the bank or other place where the interest on the debt due to such creditor is usually paid, with instructions to forward the same to such creditors, and where as the assent in writing to

the proposed union of the creditors of each of the said trusts to whom three-fifths in amount of the debts due from such trust shall be owing, or of persons legally qualified to assent in behalf of such creditors, shall have been obtained, the union of the said trusts, together with the assents and the reports and accounts on which such union is founded, shall be registered in the office of the clerk of the peace in every county through which the roads of such united trusts pass; and from and after the date of such registration the said trusts shall become and continue one united trust, and all the trustees of every trust so united shall be trustees of the said united trusts.

2. That every such trust shall be called and known as, "The United Trust of Roads," and shall be subject to all the liabilities of each trust so united, and be entitled to all the tolls, profits, and other property of each trust, and all payments shall be made from the common fund of the said trusts so united; and all the provisions of the General Turnpike Acts shall be applicable to such united trusts.

3. That all special provisions in any of the said acts as to the amount of tolls or exemptions, or other arrangements respecting any particular portion of any one of such roads, shall be held to apply to that road only, and not to the whole united trust.

4. That nothing in this act contained shall extend or be construed to extend to affect, destroy, or alter any right or interest of any person to or in any office under any turnpike trust to which such person may have been lawfully entitled before the passing of this act.

5. That any trust so united may hold its subsequent meetings at any place at which any of the said trusts might have held its meetings prior to such union, and that after the expiration of three years may in like manner and under the same conditions unite with any other trust, trusts, or united trust meeting at the same.

6. That this act shall not extend to Scotland or Ireland.

HISTORICAL SKETCHES OF THE PROFESSION.

THE INNS OF COURT.

DURING the last long Vacation, we laid before our readers some ancient rules of the Superior Courts, and regulations of the Inns of Court relating to attorneys. We now select, in chronological order, several orders concerning students and barristers-at-law.

One of the most ancient orders was made in the sixth year of Edward 4th, by the Society of Lincoln's Inn; it is as follows:—

"That all the members of this society, which then were, or should thereafter be, and every of them, as soon as they should be called to the bar, or admitted to the bench, should keep six whole vacations within the compass of three

years immediately ensuing such their admission to the bench; that is to say, one month in Lent, in the time of the reading of this society, and another month in autumn, in the time of reading also; and that they should also be personally present at the readings there, in every vacation, and that for the first week wherein the same lecture was to begin. Provided, nevertheless, that if any benchers of this society did observe the whole remainder of the vacation, it should be allowed to him for a whole vacation, and that he should be in commons for that whole month, during the before specified reading. And, moreover, that every member of this society, who should thenceforth be called and admitted from the bar to the bench, in manner aforesaid, should swear upon the holy evangelists, to keep and observe six vacations, in all points as aforesaid; without any excuse whatsoever, excepting sickness; or sickness of his or their fathers, mothers, or wives; or any suits, pleadings of assize, or *nisi prius*, relating to them, or any one to their use, happening within that month, and time of such reading, or within 14 days before or after the said reading, or within 14 days before or after the said reading, upon pain of xxs., to be forfeited and paid to the society for any default in the premises."

This order was made at a general council held in the chapel, dedicated to Richard, Bishop of Chichester, and was expressly designed "for the better advancement of learning" in that society. The readings or lectures, it will be observed, were frequent and of no short duration.

In 3 & 4 Philip and Mary, it was ordered, with the same view of promoting a sound knowledge of the law,

"That every man called to the bench should keep some learning in the vacations next after his calling to and coming to the bench, upon pain of forfeiture for every vacation 5*l*."—(a sum equal in the present day to at least 50*l*.)

The Society of Lincoln's Inn, in the 3 & 4 Philip & Mary, also ordered that none should be admitted into the fellowship of that House who had not been of an Inn of Chancery before by the space of one year, except he paid for not being in Chancery, 40*s*., afterwards increased to five marks, but other barristers of Furnival's Inn, and Thavie's Inn, of one year's continuance, were admitted for four marks.

Regulations were likewise made respecting the too early practice of young barristers; and it was ordered, that any member of the House then admitted, who should thenceforth become an attorney, or should practise as a common attorney or solicitor in any of his Majesty's Courts, should *ipso facto* be expelled the House."

"It may be presumed from this regulation, that there were several instances of barristers

During the time of Queen Elizabeth, several orders were also made to promote the study of the law in these ancient societies. Thus it was directed in the third year of her reign.

"That every single reader should be at three moots in every term, and in Michaelmas Term at four moots; and every benchers not a reader to be at five moots in every term, and in Michaelmas Term at six, upon pain of 5*s*. every moot."

In order to secure the proper qualification of the members, it was ordered in the 5th Elizabeth:

"That none should thenceforth be admitted of the fellowship and company, but he that should pay for his admittance to the use of the house and company, 40*s*., except he were the son of one of the bench or utter bar; or except he were and had been by the space of one whole year of the company of one the Inns of Chancery belonging to the house."

And in 6 Eliz., it was ordered, that none should be called to the Bar, or received as an utter barrister in the society, before he had been first called and *examined* by the whole Bench, as by a former order, made 3 & 4 Ph. & M., was provided.

On the 20th June, 36 Elizabeth, it was agreed by all the judges, by the assent of the Benchers of the four Inns of Court—

"1. That hereafter none should be admitted into Innes of Court till he may have a chamber within the house, and in the meantime to be of some Inne of Chancery.

"2. That none be admitted to the Bar, but only such as be at the least seven years' continuance, and have kept the exercises within the house and abroad, in Innes of Chancery, according to the orders of the house.

"3. That there be in one year only four utter barristers called in any Inne of Court, (that is to say,) in Easter Term two, and in Michaelmas Term two, where by the orders of the house the benchers call utter barristers, and where the readers, by the order of the house, do call, then only two by the Summer reader in his reading, and two by the Lent reader in his reading.

"4. That such students be called who be fittest for their learning and honest conversation.

"5. That the readers be chosen for their learning; for their duly keeping of the exercises of their house, for their honest behaviour and good disposition, and such as for their experience and practice be able to serve the commonwealth.

"6. That every reader continue his reading three weeks, and to read thrice every week, and oftener, in such houses as hath been used to practising also as attorneys in those times. What do the barrister-solicitors for the Treasury, the Customs, and the Excise say to this rule?

read oftener, upon pain to be taken as no reader, and to be removed from the bench, except only in case where they shall not be able to perform it by reason of their sickness.

"In the 42 Eliz. it was further ordered that none should be admitted of this Society, except he were of good parentage, and not of ill behaviour. And that special regard should be taken of such as shall be called to the Bar and Bench for their learning."

So far we have made our extracts down to the end of the reign of Queen Elizabeth, from which it will be seen that the trust reposed in the governing body of these "Ancient and honourable Societies," founded for promoting the study and practice of the law, was faithfully performed. It will be observed that many *exercises* were required before any one could be called to the Bar, that the calls were comparatively few, and the most learned and honest were selected.

LAW REPORTING.

THE "REGULAR" AND "PERIODICAL" REPORTS.

WE observe that in the August number of the *Law Review*, the subject of "Reform in Law Reporting and Legal Publications," is again discussed. The article consists chiefly of the two Reports of the Special Committee of the Law Amendment Society, to which the matter had been referred. Those Reports have already been laid before our readers. The editor, after advertising to other improvements which he has sought to effect, says, "It has hitherto been our duty, 'regardless of sacrifice,' to enter into many inquiries which may lead—at all events in the opinion of some—to the injury of the temporary interests of the profession. It is now," he says, "far more agreeable to further a change which not only tends to improve the Law as a science, but which will relieve the working professional man from a heavy burden."

It is observed, also, that "in most other Reforms, the aid of some important bodies out of the profession is essential: Queen, Lords, and Commons,—or at all events some department of the Government,—must usually give their aid or consent, and the Parliament ratify it; but here it is the profession alone that can and must work out the change, and almost every member of it may assist. What lawyer is there who does not in some way help to contribute to the present system of Law Reporting? All professional men read, cite, quote Law Reports and other Law Books more or less, and almost all buy them more or less." "They

now bear the greater part of the burden, and they must relieve themselves from it."

It must be admitted, by any one of ordinary candour, that the facts stated by the Law Amendment Society, relating to the defective and objectionable system adopted in the regular Reports, are strictly true,—namely, that the cases are reported at too much length,—that many of them are *useless*,—and that they are often unreasonably *delayed*.

There may be excuses for these faults, and it may be difficult to apportion the amount of blame severally belonging to the authors and publishers; but a reform must evidently sooner or later be effected. The Law is injured and the profession inconvenienced by the present system. There is no novelty in the complaint. We have year after year brought the subject into notice during eighteen years. The former long delay has been partly remedied by some of the reporters, but much more expedition is required by the larger part of them, and the other evils of long and useless Reports remain for the most part unabated.

It appears that in order to maintain the present high price of the Reports, the publishers are of opinion that a certain *quantum* of paper and print must be put together, and the author supplies the copy with that object in view. We trust that both parties will have the good sense to set about a gradual improvement of the existing plan. We think they would sustain no loss by the alteration, but be that as it may, it is evident that if the old ways are not repaired, some new ones will be found.

Our notion with regard to the various kinds of Reports is, that within six months from the close of each Term or Sitting, the really useful decisions in each Court should be published. The facts, arguments, and judgments should be given with sufficient fullness to explain the extent of the points decided and no more.

It is palpable, however, that in these days, when everything must move at railway speed, neither quarterly nor monthly publications, however excellent, will satisfy the wants of the profession. Those elaborate and important works will pursue their dignified course, and we hope with success; but a *weekly report of every kind of legal information* is absolutely requisite. Along with all new statutes and rules, whether projected or passed, and miscellaneous intelligence, *short and early notes of decisions* in the Superior Courts are essential to every practitioner. They should be given in a

briefly and concisely. The shortest possible abstract of such of the facts as are important will be sufficient. References to cases should be given, and the result of the judgment with a brief statement of the grounds on which it rests. More than this is superfluous for immediate information. True it is, that the parties in a cause are glad to have the full details, but generally they have their own short hand-notes.

This plan we have always wished to pursue in these pages, and our readers will have remarked that for a considerable time past we have been making rapid progress in that direction, and doubt not that we shall fully achieve our object in that important branch of the labours of the fraternity of the *Legal Observer*.

REMARKABLE TRIALS.

CASE OF RUSH FOR MURDER.

April, 1849.

In the early volumes of the *Legal Observer* appeared a long Series of Criminal Trials, comprising particularly cases of circumstantial evidence. Our limits enable us only to select those which are distinguished by some remarkable facts; and we take the opportunity of the Long Vacation to record the trial of Rush for the murder of a member of the profession, Mr. Jermy, the Recorder of Norwich, and his son,—as well for its extraordinary nature,—as for the distinguished merit of the Judge before whom the trial took place. There is but one sentiment of respect and admiration for the patience, ability, judgment and dignity with which Mr. Baron Rolfe presided at that long and painful trial. The charge to the jury was characterized by remarkable perspicuity in stating and commenting upon the complicated details of the evidence. All the material facts being comprised in the summing up, we shall lay it somewhat fully before our readers, who will particularly notice the appropriate commentary on each part of the chain of testimony.

After the completion of the evidence for the prosecution and defence,

Mr. Baron Rolfe said—Gentlemen of the jury, your opinion on this case must be formed entirely on the testimony which has been given in this Court. The first thing, therefore, is to consider what the fact is which now claims inquiry. We are inquiring into the murder of Isaac Jermy, and under what circumstances he came by his death. That you must learn from the testimony given in the few preceding days. It is detailed by a number of witnesses, and of the fact there cannot be any reasonable

doubt; but, as from the peculiar circumstances it may be desirable to show that death took place, I shall call your attention to what each witness says on the subject.

The learned judge read in succession the evidence of Watson, Eliza Chesterton, and Margaret Reed, the cook. He then continued—

"That is the account of the murder given by the three witnesses alluded to. It is confirmed by two pieces of evidence put in on the part of the prosecution. I allude to the depositions of Mrs. Jermy, one of the unfortunate sufferers, and of Maria Blanch Flower, the nurserymaid. Therefore, you have now the account of five people, who were more or less witnesses of what took place. Again, the testimony of Edward Harvey, the young man who was called early on Friday, is not unimportant. The testimony of Honor Holmes differs from that of Harvey in this respect, that she did not see anything, and that when they got 145 yards they heard a sound like the slamming of a door, and that when 200 yards away the sound was repeated."

"I may here observe," (said the learned judge,) "by way of anticipation,—it being certain that only four shots were fired,—that the difference of the witnesses prepare us for what human experience shows, that when people are giving an account of transactions which excite them strongly, they never give the same account of them. This is admirably illustrated by the present case; and you, gentlemen, must not attribute the least importance to such discrepancies. God knows if we shall ever be in such a state of excitement as these witnesses were then in; but who can say that he would have his faculties sufficiently about him under such circumstances to observe what happened? Even when there is no excitement a great difference in the minute details of evidence always arises."

"In the present instance, one witness who had his eyes to the door saw a figure and a flash of light, while the other, whose attention was not directed in that way, saw nothing. About 80 minutes after, the body of Mr. Jermy was found in the porch, and was carried with that of his son into the dining-room. Both were examined, and from both a number of pieces of lead were taken. Whether these pieces of lead were like round shot or slugs is entirely unimportant to the question which we are now considering. And, then, do we infer from all this? Whatever other matters are in doubt, it seems clear that the person who shot young Mr. Jermy was guilty also of the murder of Mr. Jermy, seen in cautiously use the words, "was guilty of the murder," because it is a possible hypothesis that the man who shot young Mr. Jermy was not the hand that shot his father."

"I need, however, hardly tell you that if two or more persons come together on a common enterprise, and one kills one victim and the other another, they are both equally guilty of the murder of each. If it was done by two persons it was done in concert, because the hypothesis that they should come for such an object without concert is obviously absurd.

"But if there is any doubt about that, the similarity of the slugs found in the two bodies and on the floor proves the thing to demonstration. Therefore, it is clear that the man who was in the house was guilty of the murder of Mr. Jermy, whose body was found in the porch. There remains, then, only one thing, viz., to discover who was the man who shot Mr. Jermy. The prosecution says it was the prisoner, and that is the point which you, gentlemen, must satisfy yourselves upon. To show you who was the man, the first evidence is the same that I have already called your attention to in showing what the prosecution was."

The judge read the evidence of Watson, Chestney, and Reed on this point. He was interrupted by the prisoner, who wished to have mentioned some little discrepancy as to his movements. The learned judge then continued—

"It makes no difference in the world where the man was when Watson met him. It does not matter whether he had turned the corner or not. You see that out of the five witnesses who saw the murderer at Stanfield Hall, four state their confident belief that the prisoner was the man. The fifth never saw him before, and could only say that the murderer was a stout-built man."

"Now, this is very cogent as evidence, but at the same time several observations would apply to the evidence if it rested there. The very confusion attending such occurrences was unfavourable to such evidence, and I have pointed that circumstance out in every case when laying evidence of the kind before a jury. There is no sort of evidence that is given which is more convincing, and yet which has been more frequently proved to be completely unfounded. A striking instance of this occurred in a case where a jury convicted a man of a gross and murderous attack upon another person. It afterwards turned out that they were mistaken. But at the same time in my experience these mistakes were in the instances where men had a long time to look at a person who was previously a stranger. We are less likely to be deceived in the appearance of a person we know than by looking for a while at one we don't know. If any of you, gentlemen, begin

looking at a man sitting at that table, and he goes out, I think you would pause before you swore to him afterwards; but if you have only a sufficient knowledge of a man's appearance, a momentary glance will in an instant tell you that it is him. Take, for instance, one of your children; you will recognize him at once by signs which perhaps it is impossible for you to describe. You will say, 'I don't know how, but I am as certain as I am of my own existence. I feel a degree of confidence which it is impossible for me to doubt.'

"The question therefore comes—Have these four witnesses a sufficient knowledge of the prisoner Rush? That as to Mrs. Jermy is as follows—Rush appears to have been on odd terms with Mr. Jermy, sen., sometimes calling on him and sometimes quarrelling.

"Prisoner.—Mr. Lord, I don't know this Mrs. Jermy.

"Baron Rolfe.—That is a proper observation, and I don't complain that you set me right. Yet one can't understand but that Mrs. Jermy must have been in the habit of seeing the prisoner. That being so, he was in the position of a man not an entire stranger. The servants were in the habit of seeing him go along the passage. It is made out that the man who was seen there on the night of the murder was disguised—how we don't know. But if a person is well known it is not quite so easy for him to disguise himself as at first sight may be supposed. That being so, the four witnesses swear as I have read to you. I would advise you not to pay much attention to the difference between the use of such words as 'I believe it was the prisoner,' and more positive expressions. All you know is the confidently expressed opinion, that the prisoner was the man. It thus becomes very important to see what other evidence there is, whether there are circumstances consistent with the guilt of the prisoner and inconsistent with his innocence. The main evidence that is relied on for this I proceed to notice. Rush is living at Potash farm."

His lordship then proceeded to read his notes of the evidence of Emily Sandford, and when he came to that portion of it where she said the prisoner went out and returned about 9 or half-past 9 o'clock, observed—"Now, if he is a guilty man it was during this interval he committed the murder; if innocent, he was otherwise occupied." Having concluded the notes of her direct evidence, his lordship proceeded to her cross-examination.

The prisoner's account of his behaviour was, that he was moved to tears by reflecting on his behaviour to her, and by thinking in how terrible a position he had placed her, so that he could not take her to the concert. He

says he was touched by her ready acquiescence, and moved to tears by the way in which she at once consented to forego her wishes with respect to the concert. She goes on to say that on the night in question he went out about seven or half-past seven o'clock."

"*Prisoner.*—When you get on further, my lord, you will find something else—she said it was an hour and a-half between the time I went out and I returned."

"*The Judge.*—In her cross-examination by the prisoner it was admitted by this witness that he went twice to her room that night, although she said nothing about the second occasion of his going into her room. It further appeared in her account of that night that the prisoner on going into the room had talked a good deal, and that among other matters they had spoken about the concert; and so far this bore out the assertions of the prisoner, for they conducted themselves as if they were man and wife, and as if nothing horrible had taken place. However, it is for you to say whether this was a blind or not, but as far as it goes, it bears out what he says about the concert. Supposing nothing else had been proved, these facts would not show what he did, but they would show that he was at something or other which pressed very heavily upon him.

"If the evidence rested there, the effect of it would be that Mr. Jermy was murdered—that four people felt confident, more or less, that Rush was the murderer—that he was out at the time of the murder, and returned home under circumstances which showed his consciousness of something very terrible having happened. From the first moment this evidence was given my attention was given to show how the rest of the evidence might be brought to bear upon it, and how it could be explained away; for as it stood there were two or three modes by which it could be cleared up. The prisoner, for instance, might have been out in search of a poacher, and might have met and shot him. His agitation so far showed that something terrible had happened, but not that he was a murderer. But coupling it with the fact that he was recognized at Stanfield Hall, it might be difficult to come to any other conclusion than that he was the guilty man.

"The prisoner, therefore, made a statement the object of which was to show that all the witness stated was true, not strictly so, but slightly coloured; but that his conduct arose, not from the fact that he had been murdering Mr. Jermy at the Hall, but that he knew something was going on, and that he was therefore agitated and alarmed."

"*Prisoner.*—After I heard the fire-arms.

"*Judge.*—Yes.

"Now, gentlemen, if this were true, the

prisoner certainly would not be guilty of the murder of Mr. Jermy, but, morally, I could not see much difference in his conduct. He had heard shots fired and the bell rung at the hall. He must have guessed something terrible had happened; but he went quietly back, and made no effort to assist the people living there. However, the morality of this act has nothing to do with his present guilt. But let us see if it is possible to give credence to this account, setting out of view that in spite of his animosity he should not have tried to save the life of one whom he called his friend, and of his son.

"When he was taken up next morning at eight o'clock, and when the police said to him, 'You are said to be the man who murdered Mr. Jermy last night,' would he not, if he possessed common sense, have said, 'I murder Mr. Jermy! Never. I know who they were that did it, and I will give you the best account in my power. One of them is a man named Joe, and another is a man named Dick, and another calls himself a lawyer. They were the people who did it, because I know they were going to take forcible possession that night.' That was what a man's interest, under the circumstances, would have induced him to say.

"You, gentlemen, may form your own opinion upon it; but I confess that is the light in which it strikes me. I am bound to see equal justice done between the prosecutor and the prisoner, and I see no other way in which I can put this. He knew a dreadful outrage was going to be committed; next morning he hears that two gentlemen have been murdered, and he never says one syllable about the whole affair except on this day, and in the course of last January, when he says he wrote a letter to his solicitor with an intention of stating all he knew about it. Here, then, the facts stand thus—

"His lordship recapitulated the evidence and proceeded: You see, then, he returned home at the time in the greatest possible agitation. He knew something horrible had happened, because, according to his own statement, he had heard shots fired and the Hall bell ring. He is taken up, and he never gives the least hint of this story, though it would have absolved him at once if true; for if so, there would have been some trace of the people he mentions—some of these persons engaged in the business would have come forward and said, 'I was employed in taking possession, but I was not an accessory to a murder.' But no one of these people is found—no one comes forward. I have watched with the greatest anxiety, and have looked over the papers to which I had access most carefully, to see what expla-

nation could be given, and the moment he came to this part of his case, I gave it my most undivided attention, and this is my deduction. But if this statement should be an untruth, how does the matter stand?

"Not only do all these people say it was Rush, and not only is it proved he conducted himself in an extraordinary way on the night in question, but some time after he is arrested he concocts a completely false story of the whereabouts at the time of the transactions which then took place. These are the main features of the case so far, but there are details to which I shall shortly direct your attention—I say shortly, because if the main features do not satisfy you of the prisoner's guilt, I never would have you rely on very minute circumstances, as they are apt to deceive, and you cannot fully depend on them. These minor circumstances are these:

"The murderer dropped two papers in the hall. It has been attempted to be shown that these papers came from Rush.

"His lordship read the notices signed 'Thomas Jermy.'

"That Thomas Jermy knew nothing of these notices was quite clear. Who then wrote them? In order to show it was the prisoner, Jesse White swore it was his hand-writing, though it was in a disguised hand, and that there were two or three of the letters which he knew to be Rush's.

"Now, I must say, if I were a juror, I would not attribute a feather's weight to this. The witness, no doubt, thought he was right, and might be so, but in printed characters such as these, it would be almost impossible to speak with confidence, and such evidence was unsatisfactory. All you can say is, the papers were written by some one whose writing is not dissimilar to that of the prisoner. But there is other evidence of some importance.

"Among Rush's papers were found two books, just of the size and with similar covers to those produced. The prosecutors say that the covers on which the notices were written were like the covers of these books, and I can only say the same also. In the books found in Rush's house are two, with the label of the makers ('Messrs. Gerrard') upon them. Mr. Gerrard on being called says, that in 1848 he made up certain books for the purpose of teaching book-keeping, in sets of five, three large and two small. The three large had labels upon them. The probability therefore is, that whoever had bought two of these books would have bought the third, and inasmuch as only two were found in Rush's house, that he must, at some time or another, have had the third. It is said that the covers on which the

notices were written are exactly such covers as those of the missing book would have been. They are of three sheets of paper in order to make them strong for children's use.

"This evidence is to my mind much stronger than that of the hand-writing; but I do not rely much on it, for, after all, who could tell but that the book might have been taken from the prisoner by some other person, and the book might still be somewhere at his house? It is suggested that where two books are found you should find three; and this goes in some degree to connect the prisoner with the notice.

"*Prisoner.*—There is one observation I wish to make, my lord. Mr. Gerrard sold 100 sets of these books. Do you think you can get them complete in every house you went to? This is really extraordinary.

"*The Judge.*—Well, that is very fair. I put the case another way. There is another circumstance mentioned, but I don't think you can attend to it. The book missing is the cash-book. In the cash-books of the set faint lines have been made on the covers by the ruling, and if it were light enough you could see similar traces on the covers produced. In addition to this it has been relied on for the prosecution that the prisoner was in the habit of going out about the same hour on several nights before the 28th, and the suggestion is, that he did so with the intention of committing the same crime which he afterwards had an opportunity of doing. Whether that may be so or not I will not say.

"*Prisoner.*—It is extraordinary to say I went out at the same hour, my lord; no such thing was proved.

"*The Judge.*—I really do not think it matters whether he went out half an hour more or less."

His Lordship then reviewed the effect of the evidence so far, and continued:—

"The morning after the murder the police went to Potash, and somebody at the hall must have told them to do so. It is stated by the prisoner that this should go to his favour, because they went there on account of his known hostility to Mr. Jermy. At all events they had the police watching the farm, and the prisoner conducted himself like a man who had committed a great crime, as well as giving a false account of himself when he is arrested.

"*Prisoner.*—But was it likely I should have made the observation I did to Emily Sandford if such a thing had been on my mind?

"*The Judge.*—The prisoner suggests, gentlemen, that what he said when he went home was in his favour, and you are not to mind the inferences I draw, but to form them for yourselves.

"The next question is, what could have prompted the prisoner to so dreadful an act—one happily so unusual and unprecedented

as for a man to go out in the dark of even-
 ing to murder the owner and the son of the
 owner of the adjoining estate, and to at-
 tempt the life of a lady and her servant?
 It is true great crimes are often perpetrated
 without any imaginable motive, but when
 motives did appear to exist they were so far
 a means of arriving at a satisfactory con-
 clusion.

"On the part of the prosecution, it is at-
 tempted to show that a most malignant feeling
 existed on the part of the prisoner towards Mr.
 Jermy. I confess I pay no regard to the evi-
 dence of Howe. I do not inquire whether it is
 true or not; but supposing a man talking to a
 lawyer or his clerk about a lawsuit to use
 angry expressions, it suggests no more to my
 mind than if he said, 'I will break his head.'
 Other observations of a similar kind I would
 dispose of in a similar way; but these remarks
 do not apply to two letters which the prisoner
 put in evidence, one dated April 26, containing
 a most malignant strain of expressions towards
 the deceased, and another of an earlier date.
 But in addition to this, there is attempted to
 be shown a long series of transactions which
 led to the result, that if the Jermys could be
 murdered, a large property, to the amount of
 many thousands, would come into the posses-
 sion of the prisoner, and which if they were
 living he could not get. If this be true, it is
 not confirmed or weakened by anything I have
 said. The evidence of this motive is to be
 found in the papers to which I shall now call
 your attention.

"There were in London two claimants to the
 Stanfield and other estates, named Jermy and
 Larner. The prisoner held leases of two farms
 at Felmingham, of which the leases would ex-
 pire at Michaelmas. In October he entered
 into negotiation with these men to put them
 into possession of the Felmingham property, on
 the understanding that they would sign an
 agreement to give him a beneficial lease of
 those farms; but as possession could not be
 had till the 1st of October, there was another
 agreement actually carrying out the terms of
 which the agreement of the 3rd of October
 contained the effect, signed subsequently. It
 was arranged that Emily Sandford should come
 down to Norwich on the 5th of October. She
 was met by Rush, and he brought her over to
 Potash. At that time it was occupied by his
 son and his son's wife. She was taken to
 Rush's bed-room, which was separate from the
 rest of the house. On the Tuesday following
 it was proposed she should go over to Norwich.
 It was arranged that Savory, the servant boy,
 should drive her. The prisoner was to go in
 the gig with her towards Stanfield Hall, where
 he said he wanted to call. They went as far as
 they could in the gig, when they got out. He
 went to the Hall. She waited 20 minutes; and
 when he returned he said he had not finished
 his business with Mr. Jermy, but he hoped he
 should do so.

His Lordship then read his notes of the
 subsequent evidence of Emily Sandford as
 to the copies of papers which she made at
 Rush's request while at Norwich. His
 Lordship then read the papers, and com-
 mented on them with great sense and in-
 tuitiveness, during which he was several times
 interrupted by the prisoner.

"If those papers had been prepared before
 the murder it is useless to speculate on any fur-
 ther motives. The forgeries could of course
 have been detected during the lifetime of Mr.
 Jermy, but after his death these could have
 been put forward as genuine deeds. Supposing
 the wicked designs actually fired on, there was
 no time to be lost. On the Thursday follow-
 ing the murder Mr. Jermy would have a
 right to take possession of Potash. Here, then,
 the prisoner is connected with deliberate fraud,
 and he waited till the last moment of time when
 it was desirable to carry his design into ex-
 ecution.

"I looked very carefully last night over all
 the evidence to see if there is anything to affect
 the credit of Emily Sandford on these points,
 for, as to what took place on the night of the
 murder, it is impossible to deny it, because it
 is admitted by the prisoner. In her first depo-
 sitions she stated what, if in charity we must
 not think to be a deliberate perjury, was at
 least stated with an intention to deceive; and
 there is certainly reason for distrusting, though
 not disbelieving, the evidence of a person who
 has departed from the truth."

His Lordship then read his notes of the
 evidence of Emily Sandford at length, and
 compared it with her depositions as he went
 along.

"Looking at the case chronologically,
 you have a strong motive pressing on the
 mind of the prisoner to get rid of the Mr.
 Jermy. Two nights before the time when
 it was necessary to murder him to make the
 forged documents available he was mur-
 dered. He was seen by five people, four of
 whom say that it was Rush, though dis-
 guised. On that night he was from home
 at the time of the murder. He confessed
 that there was something going on; he was
 greatly agitated on his return, and told the
 woman he was living with that he was only
 out ten minutes. Before the magistrate
 he gave no explanation, but now he comes
 out with the story you have this day heard
 for the first time. It is quite clear that the
 doors he was out in that night has been
 made known to him. He confessed that he
 had turned the green frock, and the pair of
 boots in his bed-room were not accounted
 for. Do these things not convince you
 that he did the murder? From anything
 that has been said you have doubts, your

verdict must be *Not Guilty*; but at the same time it is not permitted to any body of men to conjure up doubts, if in the bottom of their conscience they feel none."

The jury then retired.

After an absence of not more than five or six minutes the jury returned, and to the usual question, the foreman returned the verdict *Guilty*.

During the whole progress of the trial the judge had shown the greatest forbearance towards the prisoner, who conducted his own case, and allowed him in every instance the fullest indulgence, both in the cross-examination of witnesses and his address to the jury; but the verdict "*Guilty*," having been pronounced, the sentence was delivered with just and awful severity, in the following terms:—

"James Blynsfield Rush, after a trial unusually protracted, you have been found guilty of the charge of wilful murder—a crime the highest any human being can perpetrate on another, the deepest under any circumstances of extenuation; but I regret to say that in your case there is everything which could add a deeper die to guilt the most horrible. It appears from letters which you yourself put in, that to the father of the unfortunate victim of your malice you owe a debt of deep gratitude. You commenced a career of crime by endeavouring to cheat your landlord; you followed it up by making the unfortunate girl, whom you had seduced the tool whereby you should commit forgery; and having done that, you terminated your guilty career by the murder of the son and grandson of your friend and benefactor. More cannot be said. It unfortunately sometimes happens that great guilt is too nearly connected with something that is calculated to dazzle the mind; but unfortunately, in your case you have made vice as loathsome as it is terrible. There is no one who witnessed your conduct during the trial, and who heard the evidence produced, who will not feel as the result of that evidence that you must quit this world by an ignominious death, an object of unmitigated abhorrence to every well-regulated mind. I shrink not from making this statement, in order to point out to you the position in which you now stand. To society it must be a matter of perfect indifference what your conduct may be during the few remaining days of life that remain to you. No concealment of the truth in which you may continue to persevere will cast the slightest doubt upon the propriety of the verdict. No confession you can make can add a deeper light to the broad glare of daylight guilt disclosed against you. So, far therefore, as society is concerned, the conduct you may pursue is matter of indifference; but to yourself it may be all-important, and I can only conjure you by every consideration of interest that you

employ the short space of life that yet remains to you in endeavouring by penitence and prayer to reconcile yourself to that offended God before whom you are shortly to appear. In the mysterious dispensations of the Almighty, not only is much evil permitted, but much guilt is allowed to go unpunished. It is perhaps presumptuous therefore to attempt to trace the finger of God in the development of any particular crime, but one has felt at times a satisfaction in making such investigations, and I cannot but remark that if you had performed to that unhappy girl the promise you made to her, the policy of the law, which seals the lips of a wife in any proceeding against her husband, might perhaps have allowed your guilt to go unpunished."

NOTES ON THE CIRCUIT.

OXFORD CIRCUIT.

THE business of this Circuit was concluded at Gloucester, on the 11th August. It is observed by the Reporter of *The Times*, and we gladly record the fact, "that the present is the only assize known on this circuit for many years in which the judges themselves had time to do all the business in each town without invoking the aid of Serjeants or Queen's Counsel to try prisoners, or to open the commissions, or in which all the civil cases entered were really tried without the parties being forced to a compromise, on a reference, or having their cases made remanets.

"It has very commonly happened on former occasions that in addition to the learned judge sitting in the Crown Court trying prisoners, there has been a learned serjeant assisting in the same duty in the grand-jury room, a Queen's Counsel in the office of the clerk of indictments, and another in some unnamed apartment below stairs; and notwithstanding all this extra aid, several of the civil cases have been made remanets, and at the last moment a learned serjeant has been despatched in post haste to open the commission at the next assize town. Now, we do not pretend to say that "the justice of a sentence depends on the robe of a judge, the height of the bench, or the voice of the doomsman," or that a just judgment might not be pronounced in a coal-cellar as well as in the most magnificent palace or temple of justice that man could erect; but we fear that it is not by such steps the masses of our countrymen have had ingrained into them that respect and reverence for and confidence in the judges of assize which so remarkably and happily distinguish them, and that the ancient sages of the law were not wrong in laying it down as a maxim that "haste is the stepmother of justice."

RECENT DECISIONS IN THE SUPERIOR COURTS

AND SHORT NOTES OF CASES.

Vice-Chancellor of England.

Kinnersley v. North Staffordshire Railway Company. July 4, 1849.

RAILWAY COMPANY.—INJUNCTION.—COMPULSORY POWERS UNDER PRIVATE ACT.

An injunction was granted restraining a railway company from continuing in possession of certain lands, where they were under their act only empowered to exercise their compulsory power for three years, and it was not until the expiration of that period that they had proceeded under the 8 Vict. c. 18, s. 85, to obtain compulsory possession of the lands.

THIS was a motion for an injunction to restrain the defendants from continuing in possession of the plaintiff's lands, and from issuing their warrant to summon a jury, or taking compulsory possession under the Lands' Clauses' Consolidation Act. It appeared that the railway company were empowered by their act to exercise their compulsory powers for three years from the passing thereof in June, 1846. Negotiations and correspondence had taken place for the purchase of four and a-half acres of the plaintiff's land near Newcastle, and an offer of 3,000*l.* had been made, which was however rejected. The company, after the lapse of nearly two years, proceeded under the 8 Vict. c. 18, s. 85, which provides that "if the promoters of the undertaking shall be desirous of entering upon and using any such lands before an agreement shall have been come to or an award made, or verdict given for the purchase money or compensation to be paid by them in respect of such lands," they may deposit in the bank by way of security, "such sum as shall, by a surveyor appointed by two justices," &c., "be determined to be the value of such lands," and also to give to such party a bond under their common seal, with two sufficient sureties to be approved of by two justices, and the promoters may thereupon enter and use such lands. The company paid the valuation, amounting to 2,290*l.* into Court, and gave the bond.

Roll and Amphlett, in support of the motion, cited *Brookbank v. Whitehaven Junction Railway Company*, 15 Sim. 632; *Malins and Bovill*, contra, citing *Twomey v. Lynn and Ely Railway Company*, 4 Rail. Ca. 615.

The Vice-Chancellor said, that although the company might, upon the notice to treat being given, have taken possession, yet if the intended purchase were not in such a state as that it could be completed, they could not retain possession of the premises. As the company had taken the proceedings under the Lands' Clauses' Act, after the expiration of three years from the passing of their act, and it did not appear that any injury would result to the com-

pany from the cessation of their possession, the injunction would be granted.

Vice-Chancellor Knight Bruce.

Attorney-General v. Dew. July 11, 1849.

CHARITY INFORMATION.—EXAMINATION OF TWO DEFENDANTS.

An information for an account was dismissed with costs against four trustees of charity property—two of whom had been examined by the relator against the others without their consent, but such dismissal to be without prejudice to a new suit.

THIS was an information for an account of the rents and profits of the Peterchurch Charity Estates in Herefordshire from the trustees.

Russell, Malins, and Wray, in support of the information; *Kenyon Parker*, and *Stanton*, contra, for two defendants, contended, that as their clients had been examined by the Commissioner appointed for the examination of witnesses on behalf of the relator against all the defendants, without any order obtained or consent given by them submitting thereto, the relator had waived any decree against them.

Wigram, Renshaw, and W. Radcliff, for the other two defendants, submitted that no decree could be obtained against them, as they could not be called upon to account alone, or without their co-trustees being before the Court, citing *Thompson v. Harrison*, 1 Cox, 344; *Bernal v. Marquis of Donegal*, 3 Dow. 133; *Smith v. Smith*, 6 Hare, 524; *Champion v. Champion*, 15 Sim. 101.

The Vice-Chancellor held, that no decree could be obtained against the two defendants, who had been examined, nor against the two defendants alone, and therefore dismissed the information against all with costs, without prejudice however to another suit being instituted.

Turner v. Male. July 12, 1849.

NEXT OF KIN.—PAYMENT OF INTEREST BY CROWN.

Where the solicitor to the Treasury had taken out letters of administration for the Crown to the estate of a testator who was supposed to have left no next of kin, and had sold out the stock, and paid the amount into the Treasury: he was held liable to pay four per cent. interest from the time of sale to the plaintiffs, who had proved their claim to the fund.

THIS cause came on upon further directions, and it appeared that the defendant, who was the solicitor to the Treasury, had sold out a portion of the stock standing in the name of the testator to whom the plaintiffs had established their re-

relationship. The testator having died, leaving about 50,000*l.*, the solicitor to the Treasury, on behalf of the Crown, had taken out letters of administration, under the belief that the testator had left no next of kin. The proceeds of the sale amounting to upwards of 39,000*l.* had been paid into the Treasury.

Wright and Pritchard, for the plaintiffs, contended that the defendant ought to pay interest for the four years since the sale, at four per cent.

Wray, for the defendant, contra.

The Vice-Chancellor held, that the defendant must pay interest at four per cent. on the proceeds of the amount sold out, from the time of sale.

Queen's Bench.

(Before the Four Judges.)

Jordan v. Blackes, June 11, 1849.

FI. FA. — PARTIAL SATISFACTION. — CONTINUING WRIT.

Held, that a writ of fi. fa. holds good until complete execution, unless the sheriff be ruled by the defendant to return it. A rule nisi to set aside a levy and return the amount levied was therefore discharged where the fi. fa. was not completely satisfied at the first levy.

A WRIT of fi. fa. had issued on June 5 1838, and was made returnable immediately after the execution under the 1 Will. 4, c. 3. The fi. fa. not having been satisfied, the sheriff of Middlesex retained the writ until 12th March 1849, when he levied for the residue. A rule nisi having been obtained to set aside the levy, and calling on the plaintiff and the sheriff to return the amount levied to the defendant,

Lush and *Burchell* showed cause against the rule, which was supported by *Bramwell*.

The Court held, that the writ was a continuing writ until it was completely satisfied, unless the sheriff were ruled by the defendant to return it, and therefore discharged the rule nisi.

Regina v. Great Western Railway Company, *Ex parte Ross*, June 12, 1849.

MANDAMUS.—RAILWAY COMPANY.—BOOKS OF ACCOUNT.—PRODUCTION.

The Court discharged with costs a rule nisi for a mandamus, calling on a railway company to produce their books of account, it appearing that they had produced all the books of account which they were required by their act of parliament to keep.

A RULE nisi for a mandamus had been obtained, calling on the above railway company to allow Mr. Ross, who was a bondholder of the company, to inspect their books containing an account of moneys received and expended. It appeared from the affidavits that the company, under their act of parliament, kept two books for the inspection of members, in which were contained the accounts of receipts and

payments, and that these books had been shown to Mr. Ross.

Sir F. Kelly and *Wilks* showed cause against the rule, which was supported by the Attorney-General and J. Brown.

The Court held, that as the company had shown Mr. Ross all the books which they were required by their act to keep, they had substantially complied with the rule; and therefore discharged the rule nisi with costs.

Court of Exchequer.

In re Hammersmith Bridge Rent Charge, Jan. 13, and June 12, 1849.

RENT CHARGE IN ARREAR. — EX PARTE ORDER OF JUDGE.

Held, (per Pollock, C. B., Platt, and Alderson, BB., dissentiente, Parke, B.,) that a judge may issue, ex parte, his order under the 6 & 7 Wm. 4, c. 71, s. 82, requiring the sheriff to summon a jury to assess the arrears of a rent charge. *Capel v. Child*, 2 C. & J. 558; 2 Tyrwh. 689, disapproved of.

A RULE nisi had been obtained to set aside an order of Mr. Baron Platt, made ex parte under the 6 & 7 Wm. 4, c. 71, s. 82, requiring the sheriff to summon a jury to assess the arrears of the rent charge which was in arrear and to return the inquisition to one of the Superior Courts. The rule was obtained on the ground that a summons ought to have first issued in order to give the judge jurisdiction in the matter.

Lush in support of the rule; *Hugh Hill*, contra.

The Court, (Pollock, I. C. B., Platt, and Alderson, BB., dissentiente, Parke, B.,) held, that the order was valid. The words of the 82nd section did not import any necessity for a summons, which in cases where the rent charge was small would occasion much expense. In the case of *In re Camberwell Rent Charge*, 4 Q. B. 151, no objection was raised on this point, and although *Capel v. Child*, 2 C. & J. 558; 2 Tyrwh. 689, is against this view of the statute, that case proceeded on a different statute, the 11 Geo. 2, c. 19, and ought not to be applied further than absolutely necessary. The rule must therefore be discharged.

Archers' Court.

(Coram Sir Herbert Jenner Fust.)

Fell v. Bond and others, April 16 and May 2, 1849.

ADMISSION OF ATTORNEYS AND SOLICITORS AS PROCTORS IN DIOCESAN CONSISTORIAL COURTS.

Held, that the Chancellor of the Diocese of Lichfield has no power to admit attorneys and solicitors to practise in the Diocesan Consistorial Court, it appearing that such was not customary.

The Rev. Dr. Law, Chancellor of the Diocese of Lichfield, having made an order ap-

pointing Edward Wood, William Greene, Charles Greeley, and Robert Hand, as proctors in the Consistory Court of the diocese, the present application was made to reverse the order. It appeared that the number of proctors in the Consistory Court was limited to six, and that there were only three—John Mott, William Fell, and Sackler Chind, one of whom was registrar and examiner, and did not therefore appear in contentious cases. All the gentlemen appointed by the Chancellor were attorneys and solicitors, and one, Mr. Greeley was chapter clerk and registrar of the Dean and Chapter, and another, Mr. Hand, secretary to the Bishop.

The Queen's Advocate and Dr. Harding in support of the application. Drs. Adams and

Robinson, contra, said, that 28 out of 26 of the Consistory Courts admitted attorneys to practice there. The Court said, that no general law existed for the government of Ecclesiastical Courts in the admission of proctors; but that each had done so in its own way, and in the Court at Ely, a special commission issued in every case, and the applicant for admission was required to have served five years as a proctor of the Court, and to be a member of the public. It was not alleged that it was necessary to have a large number of proctors to carry on the business of the Court. The order must therefore be reversed, unless the case was one of fraud or oppression, without costs.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Equity.

PRINCIPLES OF EQUITY.

For the previous Sections of this Series of the Digest in the present Volume, see—

Briny Council, 100.

House of Lords, 171.

Courts of Bankruptcy, 211.

Courts of Equity, 224.

Law of Costs, 224.

Construction of Statutes, 224.

Law of Property and Conveyancing, 293.

Pleading, 334.

Principles of Equity, 352.

Practice, pp. 375, 412.

ACCOUNTS SETTLED.

1. *Reopening*.—Held, that where an administrator's accounts appear to be fraudulent, any former settlement is void, and if relief is sought within a reasonable time after the fraud is discovered, the accounts may be retaken.

Held, also, that where there are only errors and omissions, leave would be granted to surcharge and falsify. *Alfred v. Alfred and others*, 37 L. O. 305.

2. *Owners and captains*.—The Court will not open settled accounts, when where it is alleged that the accounting party was of sound mind, and no issue will be granted to try the question. *Norman v. Haslam*, 37 L. O. 211.

ADMINISTRATION.

Liabilities of executors.—Where it appeared that an executor had not dealt properly with the assets received under the will, and had also been declared by the testator not liable for the same, Held, not responsible for loss occasioned to the estate by the failure of the

bankers. *Tomlinson v. Thompson*, 37 L. O. 335.

Assignment of property.—Where a lease contained a covenant not to assign, but no provision for re-entry in case of assignment, and there was an assent by the lessor to a solicitor, though not stated on the bill, to be with his authority, a demurrer was overruled. *Smith v. Capron*, 37 L. O. 397.

Charity.—The Court refused, upon an affidavit of fitness, to appoint a new trustee to the place of one who died, since the Master had made his report on his in regard to avoid the expense of a fresh reference, decreed a conveyance of the trust property to the surviving trustees. *In re Norman's Charity*, 37 L. O. 390.

See Sale.—*See Injunction*.

Contract.—A contract with a railway company, unless executed according to the act of parliament, cannot be enforced. It is not sufficient that the company have acted as if there was a contract.

To found a claim upon an alleged trust, the nature of the trust must be stated. *Section v. North Wales Railway Company*, 37 L. O. 211.

Injunction.—An injunction restraining the publishing of a catalogue of unpublished etchings on the common law right of property and on a breach of trust in obtaining the information. *The Royal Highness Prince Albert v. Strange*, 37 L. O. 276.

Injunction.—An injunction restraining the defendant from publishing a catalogue of certain etchings obtained without the consent of the owner. *The Royal Highness Prince Albert v. Strange*, 37 L. O. 276.

See Injunction.

CREDITORS' SUITS.—Where there is a deed of trust for the benefit of creditors, the Court will not afford relief beyond the powers of the deed. *Dwyer v. Maudeley*, 37 L. O. 416.

EVIDENCE.—*Death.*—Where a party to a suit died abroad, an entry in the books of a foreign competency in the following terms:—"May 24th, 1847, No. 1748, Permit for J. M., aged 83, and W. Richards lotes Nos. 68 and 69, sent 1, and accompanied with an affidavit of the correctness of the entry, and of the identity of J. M.; Held, sufficient evidence of the death of J. M. *Attorney-General v. Mansell*, 36 L. O. 409.

EXECUTOR.

1. *Trustee.—Residue.*—*Held*, (reversing the decision of the Vice-Chancellor of England,) that an executor is not entitled to take specially the residue of property devised upon certain trusts after they have been performed, but is only trustee for the next of kin. *Dawson v. Clarke*, 15 Ves. 409, overruled. *Mapp v. Block*, 37 L. O. 355.

2. *Giving securities for bond debt.*—An executor, holding assets belonging to the testator, either in money or goods, may pay a bond debt, or obtain a release thereof, giving his personal security for the same, and set it up in his discharge as a debt actually paid out of the testator's estate. *Hepworth v. Heslop*, 37 L. O. 435.

See *Administration Suit*.

GRAMMAR SCHOOL.

Boarders.—Exhibitions.—The Masters of the Manchester Grammar School held not entitled to take boarders and private pupils to compete for the exhibitions. *Attorney-General v. Earl of Stamford*, 37 L. O. 192.

HUSBAND AND WIFE.

1. *Custody of infants.*—The custody of children decreed to the mother, where the conduct of the father was such as to affect their future welfare.

The costs of the appeal to be borne equally where the decision of the Court below is reversed. *Warde v. Warde*, 37 L. O. 312.

2. *Money lent.—Jurisdiction.*—*Held*, that letters and a power of attorney from a husband did not constitute such a lien for money supplied to the wife not being for necessaries, nor to pay creditors. *Whitgift v. Court of Equity* jurisdiction to interfere and a demand for want of equity to a bill to recover such money was allowed. *Mayer v. Skye*, 37 L. O. 532.

ILLEGITIMACY.

Examination of next friend.—Where the evidence in an issue as to the legitimacy of the infant plaintiff was imperfect and conflicting, the Court granted a new trial, but refused to order that the next friend should be examined as a witness. *Hargrave v. Hargrave*, 37 L. O. 237.

INFANTS.—*See Husband and Wife.*—*Injunction.*—*Common Law right in design.*—Where a design not registered, under the act, was painted, an application for an injunction was ordered to stand over, with leave to plaintiff to bring an action on their common law right. *Informant and another v. Strange*, 37 L. O. 367.

See Copyright: Right of Way: Timber Partners: Trade Marks: Waste.

See Assignment of Lease.

LEASE.—*Title deeds deposited as security.*—Title deeds deposited with the plaintiffs as security for the general balance of all monies due from the defendants, or either of them, on any account & otherwise, after the death of one of the depositors, subject to a lien for payment of the general balance of debts contracted, well after, as before, the decease of the *Martinez v. Winstanley*, 37 L. O. 256.

LUNACY.

1. *Remuneration to committees.*—The general rule is, that a committee of the estate of a lunatic is not to have any allowance for his time or trouble, and the circumstances must be very special to induce the Court to depart from it. *In re Westbrook*, 36 L. O. 309.

2. *Vice-Chancellor's jurisdiction.*—An infant entitled to dividends was found lunatic in the United States of America, and this branch of the Court ordered the same to be paid to his mother for his support, without requiring an application to be made to the Lord Chancellor. *Volans v. Carr*, 36 L. O. 311.

MARRIED WOMAN.

1. *Reversionary life interest.*—The reversionary life interest of a married woman, in a fund in Court is inalienable during her coverture; and the Court will not give effect to any assignment or machinery whereby such life interest is attempted to be merged in the reversion. *Whittle v. Henning*, 37 L. O. 187.

2. *Exceptions to the Master's report inserting a husband in the list of contributories in respect of shares purchased by the wife out of her separate estate, allowed.* *Ex parte Angas, In re the North of England Joint Stock Banking Company*, 37 L. O. 319.

MARRIAGE SETTLEMENT.

Payment of annuity out of capital.—Where the income arising from a personal estate was insufficient to pay an annuity under a marriage settlement, the capital was declared liable to make such deficiency good. *Woolard and another v. Hill*, 37 L. O. 296.

TESTAMENTARY RESIDUE.—*Upon standing bequest to a sufficient amount, the defendant was allowed to proceed to Peru and stay 12 months, notwithstanding a writ of ne exeat regio against him.* *See v. Melrose*, 37 L. O. 236.

PARTNERS.

1. *Bond*.—*Mortgage*.—The prayer of a bill filed by one partner to cancel a bond in security of a partnership debt, refused under the circumstances, with leave, however, upon paying the sum remaining due on the bond, to hold the mortgage given in security of such payment, and decree for an account of the sum due on the bond. *Williamson v. Gordon and others*, 37 L. O. 376.

2. *Injunction*.—*Action by assignees for money due to bankers*.—Injunction refused with costs, to restrain the assignees of bankers from bringing an action on a partnership account, although an assignment had been made from the private, to the partnership, account, of the amount standing to the partner's credit, and notice given thereof to the bankers. *Watts v. Christie and others*, 37 L. O. 473.

PATENT.

1. *Extension of term*.—Circumstances in which the duration of a patent will be extended, subject to certain terms. *In re Hardy*, 37 L. O. 375.

2. *Infringement*.—*Trial*.—*Injunction*.—A verdict on a trial at law having been given in favour of the patentee, an injunction will be granted, although a bill of exceptions has been tendered. *Bridson v. Benecke and others*, 37 L. O. 492.

PRINCIPAL AND AGENT.

Where the clerk of a house-agent signed a qualified agreement for a lease of a house, but there was no evidence of his authority, the Court will not enforce it. *Lucas v. James*, 37 L. O. 513.

PRIVILEGE.

Answer.—*Penalties*.—*Held*, that a defendant is entitled to the protection of the Court, where, by disclosing the matter in question he renders himself liable to penalties. *Mitchell v. Koecker*, 37 L. O. 335.

PRODUCTION OF DEEDS.

A charity trust is entitled to the production of such deeds as related to the property claimed, but not to other deeds. *Attorney-General v. Thompson*, 37 L. O. 296.

RAILWAY.

See *Contract*.

RIGHT OF WAY.

Injunction.—A party claimed a right of way into a street which led through another street to certain roads right and left. A company carried their line so as to prevent access to these roads through the second street, and a bill was filed against them for an injunction. The evidence of the right was defective, and the Court refused the injunction. *Hadfield v. The Manchester South Junction and Altrincham Railway Company*, 37 L. O. 239.

SALE.

1. *Higher bidding*.—At a sale under a bankruptcy, an estate was put up, subject to incumbrances. The mortgagee was the only bidder,

and was declared to be the purchaser at 500*l*. A person who was present at the sale did not bid, being uncertain as to the amount of incumbrances, but petitioned for a re-sale, offering 1,250*l*., and a re-sale was accordingly directed. *Ex parte Lee, in re Higginson*, 37 L. O. 238.

2. *Charity property*.—Order for sale of charity property without a reference, where the income is very small and a willing purchaser offers himself—the property requiring a large outlay in repairs. *In re Sowerby's Charity*, 37 L. O. 376.

SHARES IN A SHIP.

On an alleged fraudulent sale of an American ship which had been stranded at Liverpool and taken to Charleston, an account was directed to be taken. *Sharp v. Taylor*, 37 L. O. 375.

TIMBER.

Injunction to restrain felling.—An injunction granted, upon an affidavit stating that waste was about to be committed, to restrain the felling of timber. *Moore v. Jones*, 37 L. O. 316.

TRADE-MARKS.

Injunction.—Injunction granted restraining the defendant from using labels, cards, handbills, &c., which were used for the purpose of leading the public to believe that the manufacture to which they related was made by the plaintiff.

Costs in the Court below to be borne by plaintiff, as he had sought a too large injunction. Each party to pay their own in the appeal. *Ongon v. Washbourn*, 37 L. O. 355.

TRUSTEES.

1. *Appointment*.—Exceptions to Master's report overruled, where the trustees appointed were not objected to as unfit—and where the right of the survivor had not been insisted on by answer before the order of reference. *Middleton v. Reay*, 37 L. O. 377.

2. *Liability of*.—Circumstances wherein a trustee was held liable for the loss of money by the failure of bankers. *Ex parte Turner, Drever v. Mawdesley*, 37 L. O. 396.

3. *Liability*.—*Interest*.—Pending a suit to determine whether a party was entitled as tenant for life or absolutely, the Court will not charge interest on the balances in hand. *Hanergall v. Harrison*, 37 L. O. 415.

See *Charity*; *Executor*.

TRUSTEES' RELIEF ACT.

Separate use.—*Married women*.—Annuities charged on the life interest of a married woman payable according to priority. *In re Giff's Settlement*, 37 L. O. 319.

WASTE.

Injunction to restrain.—Injunction refused, with costs, to restrain a party, who has been in undisturbed possession of the estate for 30 years, from felling timber, although an issue at law was pending as to the title. *Davenport v. Davenport*, 37 L. O. 454.

The Legal Observer,

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SATURDAY, OCTOBER 6, 1849.  
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LAW REFORM.

LORD BROUGHAM'S LETTER TO SIR JAMES GRAHAM.

In the Session or during the Recess, in London or the Country,—in season or out of season,—Lord Brougham neither forgets himself nor suffers others to forget the important subject of Law Reform. Obstacles, disappointments, and ebuffs, which would mortify and disgust any other man, only stimulate him; he finds new energy from every adverse incident, and when one web is broken, sets to work weaving another, seemingly unconscious that his former labours have utterly failed, and unmindful of the indifference and disregard with which his successive schemes are not unfrequently treated and received, by the legal profession, the legislature, and the public in general.

Our readers are not ignorant of the conspicuous part Lord Brougham has recently taken in respect of the proposed alterations in the Law of Debtor and Creditor, and especially of the Laws relating to Bankrupts. It would require a lengthened research to ascertain how many different bankrupt and insolvent bills his lordship has submitted to the consideration of the chamber, of which he is so remarkable a member, within the last three years. Let it suffice to say, that he introduced a bill in the Session of 1848, which was referred to a Select Committee in which his lordship presided, conducted the examination of all the witnesses after his own fashion, and, in short, had everything his own way. The committee made their report at the close of the Session, when the further consideration of the bill was postponed to the Session of 1849. It was then referred to the same Select Committee, and after the introduction of a succession of novelties, was re-

ported to the House of Lords, adapted without any serious discussion on its merits or details, and transmitted, at a late period of the Session, to the Lower House.

The bill was referred to a Select Committee of the House of Commons, consisting of lawyers and mercantile men, who evidently bestowed considerable attention on its principles and details. They altered its form and structure, discarded many of the more startling novelties of its noble and learned framer—at the suggestion of various interests—engrafted on it, and added nothing. The principles upon which the Commons' Committee appear to have proceeded was, to retain as much of the form and spirit of the law already established, and of the language of existing statutes, as was consistent with the changes it was intended to introduce. To give practical effect to this principle, it becomes indispensably necessary, minutely to examine and alter every clause of the bill sent down from the Lords, a work requiring great patience and care. Lord John Russell, on the part of the Government, not very wisely it would seem, entered into some sort of arrangement that the bill should not be thrown out for another Session, and although the Commons' Committee exercised more than ordinary diligence,—as well as remarkable discrimination and judgment,—in the examination of its voluminous details, the measure required more time and consideration than could be afforded to it at so advanced a period of the Session, and in the last week it was reported, avowedly in an imperfect state,—the Attorney-General taking on himself personally the responsibility of completing the alterations the Select Committee commenced and left unfinished. The printed act is now before our readers.*

* See *ante*, pp. 298 to 308, and 318 to 327.

It bears evident marks of the impatient haste which attended its progress through the stages immediately preceding its arrival at legislative maturity, and gives occasion to regret that the utility of a measure of so much magnitude and importance, on which so great an amount of labour and attention was judiciously expended, should be marred by defects which might so easily have been prevented.

As might be supposed, Lord Brougham is not well pleased with the Commons' Committee, who declined to adopt *his* bill either in its form or substance, and he is especially dissatisfied with Vice-Chancellor Knight Bruce, the only person holding a judicial office examined before that committee, and who condemned the bill in very unqualified terms. Hence the pamphlet in the shape of a letter now before us. Previous to the prorogation, his lordship, in his place in parliament, vented his indignation in tolerably forcible language, but his disappointment and resentment, although softened, do not appear to have been exhausted.

The bill, as sent down from the Lords comprehended, as might be expected, a consolidation of the old law, and the various alterations, supposed to be amendments, which it was proposed to make in it. The committee, as his lordship truly states, "thought it expedient to examine the digest as a digest," and this proceeding fills him with inexpressible alarm. The presumption and absurdity of such a course of proceeding on the part of the committee, are thus described by Lord Brougham :

"The Select Committee consisted of most respectable mercantile men, and of some lawyers of great ability and learning, but who, from accidental circumstances, had never practised in bankruptcy; for such of them as belonged to the Court of Chancery had only entered the profession after my alteration of the law in 1831 had taken bankruptcy out of that Court, and none of them had ever held a brief before the judges of the new Court then established. The professional engagements of members, whose standing being greater, had given them practical acquaintance with the Bankrupt Law, of course prevented them from belonging to the Committee. I, however, most fully admit the great diligence and ability shown by the Committee in performing the duties entrusted to them, and they pursued a proper course in examining fully the proposed changes in the law. Upon these, their opinions, especially the opinions of the mercantile members, deserve the most respectful consideration; and I have not one word to offer, by way of complaint, upon the amendments which they suggested to the Lords, although I exceedingly lament one or

two of them." But I did wonder, indeed, that they should not have called before them the learned Commissioners of the London Court of Bankruptcy, whose long experience in a peculiar manner fitted them to give valuable information and opinions deserving of respectful consideration upon a law which some of them, for 30 years, none of them for less than 17, had been daily administering. When I was myself examined, I can only say that, as I referred constantly to them, I should have altogether declined attending as a witness had I not assumed as a matter of course, that they would have been afterwards consulted. However, the amendments made in the new provisions of the bill are of the less importance, that they must be regarded as a postponement, rather than as a rejection, of one or two material enactments in favour of creditors which had been agreed to by the Lords. It is to the treatment of the Committee of the other portion of the bill, the *digesting* part of it, that I wish your attention should be directed.

"This Committee thought it expedient to examine the Digest as a digest. Not satisfied with the skill of the able and most learned workmen by whom it has been prepared, the Committee, wholly unaccustomed to the administration of the Bankrupt Law, conceived that it was their duty to consider and to alter, in material particulars, the work carefully done by the person of all others the most familiarly acquainted with the practice of that law in all its branches, and in all its details. When the House of Lords received, in 1824, from the Commons, a Bill Consolidating the Bankrupt Laws (6 G. 4, c. 16,) Lord Eldon and Lord Redesdale

"In a note on this part of his Letter, Lord Brougham says:—"The only point on which the present Chancellor and myself had differed, in the House of Lords, was the Dead Men's Clause, to which I was very partial, from my knowledge of the great inconvenience attending a creditor's suit. But I yielded a reluctant assent to striking them out, chiefly because the two learned gentlemen, who were called from the Court of Chancery to give evidence in favour of them, admitted that a double proceeding, one in Bankruptcy and one in Chancery, would be necessary, whenever a deceased trader had any real estate, however small. Lord Cottenham, however, promised to bring forward a bill for facilitating and Shortening Creditor's Suits; and I gave notice that I should early next Session, if anything prevented my noble friend from doing so. The appeal to the Commissioners themselves I entirely approve."

The application of the last sentence is not intelligible to us, but we may be pardoned for observing, that if Lord Cottenham had not been prevented by indisposition from attending the House of Lords at the close of last Session, there is good reason to believe, the labours of the Commons' Committee would have been materially abridged, and the Bankrupt Consolidation act rendered much less objectionable.

never deemed it below their dignity to rely upon the skill and learning of the workmen who had framed it, and to regard it as an able and accurate consolidation. The Lords joined these eminent men in giving the same confidence to the bill so sent up from the Commons, and it passed both Houses without any discussion, much less any alteration. That confidence, which it was not unworthy the two most experienced bankrupt lawyers of the age to repose in those who drew Lord Henley's Act, might, perhaps, not unbecomingly, have been given to the bill prepared by the combined labour of the Bankrupt Commissioners, and the officers of their Court, as well as sanctioned by a Committee of the Upper House. But nothing of the kind took place."

Lord Brougham is apprehensive, and probably with very good reason, that the Commons House of Parliament will exhibit as little confidence in regard to that bill he intends pressing forward next session, for enacting a Digest of the *Criminal Law*, and the *Law of Procedure* in Criminal Cases, as the Select Committee of that House evinced last Session in respect of his Bankruptcy Bill. The history of the Act for Consolidating the Criminal Law, and the judicial appreciation of his Lordship's exertion in that direction, are modestly and characteristically described in the following extract :—

"I presented, in 1844, a bill for enacting a Digest of the Criminal Law, founded upon their valuable report, made some weeks before the date of my letter. Lord Lyndhurst (then Chancellor) highly approved of the bill; but considering the great importance of the subject, considering also that, from the nature of the thing, the work must be mainly executed out of parliament, and required only to be adopted or sanctioned by the legislature, he referred it to another commission, that is, to the same Commissioners, with others added, to revise their labours. Accordingly, a further report was made in 1847, and the digest having now received a very full consideration, I again brought in a bill founded upon it, which, in 1848, was referred to a Select Committee of the Lords. As chairman of the Committee, I addressed letters to all the judges of the three kingdoms, requesting their observations upon the digest, submitting it to them, together with copies of all the reports upon which it had been founded. Waiting for the answers of those learned persons, I postponed to the next session all further proceedings with the bill. Again, I presented it at the very beginning of the Session just ended; again it was referred to the same Select Committee; and again we anxiously expected the answers of the judges. The session has, however, passed away without any answer whatever from any of the English judges, though valuable suggestions have been communicated from those of the other two

kingdoms. I conclude, from this circumstance, that the judges of England are, generally speaking, satisfied with the Digest, and have no corrections to offer which they deem of sufficient importance to call for the consideration of the Lords."

His lordship mentions in a subsequent paragraph, that the Bill relating to Criminal Procedure consists of 12 chapters, 47 sections, and 1,180 articles. The Digest of Criminal Law, we presume, must be at least of great magnitude, and when this fact is borne in mind, we can easily account for the expressive silence of the English judges, without ascribing it to their satisfaction at the manner in which the Digest is executed. How so able a logician as Lord Brougham, comes so readily to the conclusion, that because the judges have offered no suggestions, they can have no corrections of importance to offer, we leave it to others to explain.

In the pamphlet before us, the noble lord has not been wholly unsuccessful in proving that the Commons' Committee, by modifying and altering the Digest, have, in some particulars, rendered it less perfect and effective. As we desire that the instances cited by his lordship may be described in his own words, the extracts we had selected for this purpose must stand over to a future publication, as well as some further remarks which the Letter to Sir James Graham has suggested.

NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

PRIVATE MONEY DRAINAGE ACT, 1849.

12 & 13 VICT. c. 100.

THIS act recites the 9 & 10 Vict. c. 101; the 10 & 11 Vict. c. 11, and the 11 & 12 Vict. c. 119, authorizing the advance of money for the improvement of Land by Drainage, and states that it is desirable that works of drainage should continue to be encouraged in order to promote the increased productiveness of the land and healthiness of the districts where it is required, and to supply the demand for agricultural labour, especially at that season of the year when other sources are suspended; that the whole sums wanted in the recited acts have been appropriated, and further sums are required; and it is expedient that the same should be advanced by private individuals, and that the owners of land should be enabled or authorized to borrow or advance money to be expended in draining such land:—it is therefore enacted as follows:

1. The Inclosure Commissioners in England and Wales are authorized to carry the act into execution and appoint assistant commissioners, secretaries, surveyors, &c., and the allowances and expenses are to be regulated by the 8 & 9 Vict. c. 118. In Ireland the Commissioners of Public Works are to be Commissioners, and have power to appoint officers for executing this act.
 2. The owners of land may borrow or advance money under the provisions of the act.
 3. Application for money to be made to the Commissioners.
 4. Inspection of the land to be made by the officers of the Commissioners.
 5. The provisions of the first recited act as to notices of applications are incorporated in the present act.
 6. Expenses may be recovered where an application has been refused, or no money can be raised.
 7. When the application is allowed, the money is to be paid into the bank to the credit of the Commissioners.
 8. Regulations are made where several persons contribute towards the loan required.
 9. The bankers' certificates for contributions are to be exchanged for grants by Commissioners of Rent-charges for 22 years.
 10. The Commissioners are to issue a grant of rent-charge to the owner of lands.
 11. Rent-charges may be made on separate portions of the land included in the application for a loan.
 12. Rent-charges may be apportioned on separate farms or parts of the land where the owner is desirous to sell other parts of the land.
 13. An indefeasible title and priority is given to the rent-charges, subject to tithe, rent-charge, land tax, &c.
 14. Grants of rent-charges on lands in Middlesex, Yorkshire, Ireland, and Scotland, are to be registered.
 15. The rent-charges are to be recoverable in the same manner as rent-charges in lieu of tithes in England and Ireland.
 16. And like feu duty in Scotland.
 17. The tenant may deduct the rent-charge, except where he has agreed to pay the same.
 18. But arrears of rent-charge are not to be recoverable after three years.
 19. Advances under this act are not to be deemed a contravention of the conditions of entail of lands in Scotland.
 20. The rent-charge is not to preclude trustees from investing money in the purchase or mortgage of land so charged, unless expressly contrary to the trust.
 21. The rent-charges are to be kept down the same as interest on mortgages in fee.
 22. The expenses in the secondly recited act to be included in drainage works under this act.
 23. The works are to be inspected by the officers of the Commissioners.
 24. Payments for drainage works and expenses are to be made by the charges of the Commissioners.
 25. Where money has been paid into the bank, and the works are not executed, or where there is a surplus not applicable to drainage works, the Commissioners are authorized to make investments and repurchase rent-charge, &c.
 26. The provisions of the first recited act, as to upholding drains and outfalls, are incorporated in this act.
 27. A register of certificates, grants, &c., is to be kept by the Commissioners, and the register may be inspected.
 28. Notices required by the act may be given to the secretary.
 29. The description of land in any certificate, grant, or order, may be made by reference to former registered documents.
 30. The rent-charge under the first recited act may be redeemed by the owner as personal estate.
 31. The certificate of advance under the recited acts may comprise only such grant of lands in the provisional certificate as the Commissioners may think sufficient.
 32. Interpretation of terms of act.
 33. The short title of the act to be "The Private Money Drainage Act, 1849."
- This act will evidently give rise to many investments of capital on the security afforded by its provisions, and for the information of solicitors engaged in such transactions, we give the act fully;
- An Act to promote the Advance of private Money for Drainage of Lands in Great Britain and Ireland. [1st August, 1849.]
1. That the Inclosure Commissioners for England and Wales shall be the Commissioners for the execution of this act in Great Britain, and it shall be lawful for the said Inclosure Commissioners to employ in the execution of this act the assistant commissioners, secretary, surveyors, clerks, messengers, and officers who have been or may be appointed by the said Commissioners under the 8 & 9 Vict. c. 118, and the said first recited act respectively; and the said Inclosure Commissioners may, with such consent as provided by the said act of the session of parliament holden in the 8th and 9th years of her present Majesty in respect of appointments under such act, from

time to time appoint a sufficient number of persons to be assistant commissioners and surveyors respectively for the purposes of this act, and may from time to time remove any such assistant commissioners and surveyors; and the allowances and travelling and other expenses of such assistant commissioners and surveyors shall be regulated as to the amount thereof in like manner as provided by the said last-mentioned act in respect of allowances and expenses to assistant commissioners under the same act, and such allowances shall not exceed the allowances payable to the last-mentioned assistant commissioners; and the Commissioners for the execution of this act in Ireland shall be the Commissioners of Public Works in Ireland under an act of the 1st and 2nd years of his late Majesty King William the 4th, intituled "An Act for the Extension and Promotion of Public Works in Ireland," and of an act of the 5th and 6th years of the reign of her present Majesty, intituled "An Act to promote Drainage of Lands and Improvement of Navigation and Water Power in connexion with Drainage in Ireland, and of the several acts amending the same respectively, and such Commissioners shall have full power and authority, with the approbation of the Commissioners of her Majesty's treasury, to employ such civil engineers, surveyors, clerks, and other officers appointed under the said last-mentioned acts respectively as may be necessary for carrying this act into execution.

2. That it shall be lawful for the owner of any land in Great Britain or Ireland, who shall be desirous of borrowing or advancing money for the improvement of such lands by works of drainage under the provisions of this act, to borrow or advance money for such purpose, and to have the money expended in such improvement, and in defraying the expenses incident thereto, charged on the inheritance of such land, in manner and with the priority herein mentioned.

3. That when any owner of land shall be desirous of borrowing or advancing money under this act he shall make an application to the Commissioners to authorize such loan, and such application shall be made in such manner and form and contain such particulars as the Commissioners shall from time to time direct; and until a certificate of the allowance thereof shall have been issued by the Commissioners such application may be withdrawn or altered, or consolidated with any other application, at the pleasure of the applicant, but without prejudice to his liability as herein-after mentioned for the expenses incurred in consequence thereof by the Commissioners or their officers.

4. That it shall be lawful for the Commissioners on such application to cause the land specified in such application to be inspected, and the application to be reported upon, by an assistant commissioner, surveyor, or engineer, or otherwise; and the Commissioners shall upon such report determine and certify under their seal whether any and what amount of money shall be authorized to be borrowed or advanced

under this act in respect of the land specified in such application, and they shall by the same or by some subsequent certificate fix the rate of interest, not exceeding 5 per cent. per annum, to be paid in respect of any money to be so borrowed or advanced; and such report as aforesaid shall contain such particulars of the land proposed to be drained, and of the manner of effecting the drainage, and of the improvement to be thereby effected in the annual value of the land, as in the opinion of the party making such report will be sufficient to enable the Commissioners to judge of the expediency of allowing the application; and the Commissioners shall after the issue of their certificate of allowance be at liberty from time to time to authorize an abandonment of any part of the proposed works of drainage, or any variation therein which they may think expedient, on such terms and conditions as they shall think reasonable.

5. That the provisions of the said first-mentioned act relating to notice by advertisement of application for advances for drainage purposes, and to the proceedings to be had in consequence of any dissent to such application, or relating to the consent of the bishop of the diocese and patron of the benefice to any such application in relation to land held in right of any church, chapel, or other ecclesiastical benefice, shall (save so far as the same are inconsistent with or repugnant or inapplicable to the provisions of this act) be deemed to be incorporated herein.

6. That in the case of an application for authority to borrow money where the Commissioners shall determine that no money shall be borrowed in pursuance of such application, or where the money authorized to be borrowed in pursuance of such application, or where the money authorized to be borrowed, or a competent part thereof (as to which the decision of the Commissioners shall be conclusive), shall not be raised, and paid into the bank as herein-after mentioned, within six months from the allowance of such application, and in the case of application for authority to advance money by the owner of land himself, whether the Commissioners shall determine that any money shall or shall not be advanced in pursuance of such application, the expenses which the Commissioners or their officers shall have incurred by or in consequence of such application (the amount whereof shall be conclusively certified by the Commissioners) shall be a debt due by the party making such application to the Commissioners, and shall be recoverable by them as in the nature of a crown debt.

7. That in cases where any sum of money shall be authorized by the Commissioners to be raised in pursuance of any such application, the party or parties willing to advance the same or any part thereof, other than the owner of land making the application, shall pay the same into the Bank of England or into some bank in Scotland established by act of parliament or royal charter, or in Ireland into the Bank of Ireland, as the case may be, or into some conve-

nient branch bank thereof respectively, to be specified by the Commissioners in their certificate of allowance of the application; and such payment or payments shall be made to the credit of the Commissioners to an account the title whereof shall be named in said last-mentioned certificate, and such monies shall, until duly applied under this act, be the property of the Commissioners; but nevertheless the Commissioners, observing the rules and regulations of this act, shall not, either collectively or individually, be answerable for any monies which shall have been paid into the said banks or any of them, or any branch thereof.

8. That in any case where more than one party shall be willing to contribute toward such advance, the applicant, if willing to contribute thereto, shall have the preference as a lender, or shall be entitled to name the party or parties who shall have such preference; and the Commissioners shall be entitled to name the minimum amount to be paid into the bank as one contribution towards such advance; and upon each contribution being paid into the bank a banker's certificate for the same, in a form to be from time to time approved of by the Commissioners, shall be delivered to the parties paying in the same, and thenceforth such parties shall not be concerned to see to the application or suffer for the misapplication of the amount for which such banker's certificate shall have been taken.

9. That unless such contribution shall have been paid into the bank in contravention of the aforesaid provisions as to priority of right to contribute (in which case the amount thereof shall be repaid), the bankers' certificates for the same shall be transmitted to the office of the Commissioners, who shall in exchange for the same, issue a grant, in such form as they shall deem fit, in their name and under their seal to the party or parties named in each such certificate (if more than one, as joint tenants), his or their executors, administrators, or assigns, of a rent-charge to be issuable out of the land in respect whereof such advance shall have been authorized, or out of such part thereof to be specified in such grant as the Commissioners shall think proper and sufficient, such rent-charge to be personal estate, and to commence on the day of the date of such banker's certificate, and to be payable by half-yearly payments for and during the term of 22 years.

10. That in cases where the owner of land himself shall advance the money or part of the money for the purposes of this act, the Commissioners, on being satisfied by a report of an assistant commissioner, surveyor, or otherwise that the money advanced by such owner has been duly expended upon the drainage works sanctioned by the Commissioner to be executed, or upon any part thereof which will, independently of the part remaining unexecuted, be complete in itself, and upon the expenses thereof, including the expenses of Commissioners and their officers of and incident to the application for an advance, and that the works will be durable and effectual, and

produce an improvement in the yearly value of the land exceeding the amount of the yearly charge which can be made under this act in respect of such grant, shall issue a grant, in such form as they shall deem fit, in their name and under their seal, to such owner of land, or to some other person or persons to be nominated by him or by his executors or administrators, of a rent-charge to be issuable out of the lands in respect whereof such advance shall have been made, or out of such part thereof to be specified in such grant as the Commissioners shall think proper and sufficient, such rent-charge to be personal estate, and to commence on the day on which such money shall be reported to have been duly expended as aforesaid, and to be payable by half-yearly payments for and during the term of 22 years, and in all other respects to be on the same footing as a grant of a rent-charge to any third person.

11. That in any case where the amount to be raised shall be contributed in several sums, and several bankers' certificates shall have been taken for the same, it shall be lawful for the Commissioners to apportion the land in respect whereof such loan shall have been authorized, or so much thereof as the Commissioners shall think a sufficient security for the rent-charges to be granted, in such manner as that one or more of the rent-charges to be granted for such bankers' certificates may issue exclusively out of any definite portion or portions of such land in absolute exoneration of the remainder thereof.

12. That if it shall be represented to the Commissioners that the land charged with any rent-charge under this act is occupied in separate farms, or shall have become the property of separate owners, or that the owner thereof is entitled thereto under separate titles or for distinct and separate interests, or is desirous to sell or dispose of a part or parts of such land, or that for any other reason it will be desirable that such rent-charge shall be apportioned, it shall be lawful for the Commissioners, with the consent of the owner or owners of the land charged with such rent-charge, by order under the seal of the Commissioners to apportion such rent-charge so that a separate and distinct rent-charge may become charged on such separate farm, or on the land of each owner, or on the land held under each separate title or for each distinct or separate interest, or on the part or each part which the owner is desirous to sell or dispose of and the part intended to be retained by him, or on other separate parts of the said lands, but so that no rent-charge under such apportionment shall be less than 20s.; provided that the Commissioners shall and they are hereby directed, before making any such order of apportionment, to see that due notice of the intended apportionment shall have been given to the parties entitled to give a receipt for the said rent-charge, or some or one of them, in order that they or he may, if necessary, dispute such apportionment.

13. That, subject to the provisions hereinafter contained as to the registry of grants of rent-charges on lands in Scotland, Middlesex, or Yorkshire, or in Ireland, every such rent-charge shall without reference to the title of the parties making such application (as to which the allowance of such application by the said Commissioners shall be conclusive), be a valid and indefeasible charge upon the land comprised in the grant thereof by the said Commissioners, subject only to tithe rent-charges, land tax, local rates and taxes, quit or chief rents incidental to tenure, and charges created or to be created under any act authorizing advances of public money for drainage or the improvement of lands, and prior to all other charges whatsoever.

14. That as to lands in Middlesex or Yorkshire, or in Ireland, all grants of rent-charges thereon to be made in pursuance of this act shall be registered in the same manner respectively as if such grants were made by deed by the absolute owner of such lands without the aid of this act, and shall be liable to be postponed in point of priority to subsequent deeds and conveyances, in the same manner and to the same extent respectively as if such grants were made by such absolute owner, and without reference to this act; and all grants of rent-charges on lands in Scotland shall be registered in the general or particular register of Sasines.

15. That as to lands in England or Wales such rent-charges shall be recoverable in the same manner as a rent-charge in lieu of tithes under the act of the 6 & 7 Wm. 4, c. 71, intituled "An Act for the Commutation of Tithes in England and Wales," is recoverable, but so nevertheless that as against persons who at the time of the taking of the certificate for the contribution in respect of which such rent-charges shall have been granted, or, in the case of an advance by an owner of land at the time of the grant of his rent-charge, shall have been any such tenant for life or lives or years, as is excepted from the definition of the term owner of lands in the said act of the 6 & 7 Wm. 4, c. 71, and shall not have concurred in such application for a loan or advance as aforesaid, the party entitled to such rent-charge shall not during the subsistence of such tenancy or term be entitled to any further or other remedy for the recovery thereof than if he were entitled to the immediate legal reversion expectant on the determination of such tenancy or term; and any rent-charge which shall become charged on land in Ireland by virtue of this act shall be recoverable by the same means and in the same manner, and with the like remedies for the recovery thereof, in all respects as a rent-charge in lieu of tithe charged on the same lands is now recoverable under and by virtue of an act passed in the session of parliament holden in the 1 & 2 Vict. c. 109, intituled "An Act to abolish Compositions for Tithes in Ireland, and to substitute rent-charges in lieu thereof, and the several acts passed for amending the same."

16. That as to lands in Scotland every rent-charge which shall become charged on land by virtue of this act shall be recoverable by the same means and in the like manner in all respects as if any feu duty, or rent or annual rent, or other payment payable out of the same lands, would be recoverable, but shall be subsequent in order of charge to any feu duty.

17. That if any tenant or occupier at a rent join in the application for an improvement, or by writing under his hand signify to the Commissioners, or to any assistant commissioner, surveyor, or engineer, his consent to become charged with the charge or an apportioned part thereof, such tenant or occupier shall during his tenancy or occupation be liable to pay the charge, or an apportioned part thereof, as herein-after mentioned; and in case the application be made for a charge in respect of the improvement as well of other land as of the land included in such tenancy or occupation, the Commissioners may, upon such concurrence or consent of such tenant or occupier, by any certificate to be made in pursuance of this act, or by a separate order of apportionment, declare what portion of the whole rent-charges or rent-charge payable in respect of the improvement shall be payable by such tenant or occupier, during his tenancy or occupation, in respect of the probable improvement of the land included in his tenancy or occupation; but, except as aforesaid, every tenant or occupier who pays such charge shall be entitled to deduct the amount thereof from the rent payable by him to the reversioner, and shall be allowed the same in account with him.

18. That no arrears of any rent-charge created under this act shall be recoverable after the expiration of three years from the time when the same became payable, and no interest shall be recoverable in respect of any arrears of any such rent-charge.

19. That no proprietor of an entailed estate in Scotland shall be held to have contravened the conditions of the entail by reason of having availed himself of the provisions of this act, and no rent-charge imposed or created on any entailed lands in Scotland under the authority of this act shall be made use of as a ground for adjudging, selling, or evicting such lands or any part thereof, contrary to the provisions and conditions of the entail, but every such rent-charge shall be a good and effectual charge upon and against such entailed lands to every other effect, and upon and against the rents and profits thereof.

20. That the rent-charge by virtue of this act to be charged on any land shall not be deemed such an incumbrance as shall preclude a trustee of money held in trust, and with a power for the investment thereof in the purchase of land or on mortgage, from investing the same in a purchase of or upon a mortgage of such land so charged, unless the terms of such trust or power shall expressly provide that the land to be so purchased or taken in

mortgage shall not be subject to any rent-charge under the provisions of this act.

21. That as between the several parties interested in any land charged with a rent-charge under this act such parties shall respectively be bound to keep down and discharge the payments thereof as if the same were interest payable upon a mortgage in fee on such lands.

22. That the expenses in the secondly above-recited act particularly mentioned as to be included among the expenses of works of drainage shall, as well as in lands in Ireland as to lands in Great Britain, be deemed to be and may be included among the expenses of works of drainage in respect of a loan or advance made under the provisions of this act.

23. That the Commissioners shall as they see occasion cause the works to be inspected by a Commissioner, assistant commissioner, surveyor, or engineer, or other officer, to ascertain the due execution of such works, and such Commissioner, assistant commissioner, surveyor, or engineer respectively may require the production of such vouchers, bills of account, or other documents as may enable him to ascertain such due execution, and the amount of the expense which shall have been actually incurred in the execution of such work.

24. That, with the exception of cases where the owner of land shall himself advance money, and the expenses shall be paid thereout, for which provision is herein-before made, all monies which shall be payable on account of the works to be executed under this act, and all expenses to be incurred by the said Commissioners or their officers or on incident to the application in pursuance whereof such monies shall have been authorized to be raised, or any proceedings taken or works done in consequence thereof, shall be paid by means of cheques, to be from time to time drawn by the said Commissioners on the bank wherein the monies advanced on account of such works shall have been deposited, and be paid out of such monies: Provided always, that no such payment shall be made unless the said Commissioners shall be satisfied that such works, or any part thereof which will, independently of the part remaining unexecuted, be complete in itself, will be durable and effectual, and produce an improvement in the yearly value of the land exceeding the amount of the yearly charge which will be made under this act in respect of such payment.

25. That where it shall appear to the Commissioners that, by reason of the circumstances of the land, or the neglect of the owner, or otherwise, any proposed works in respect of which money shall have been paid into any such bank as aforesaid and a rent-charge shall have been granted under this act, cannot be executed, or that for any other cause all or part of such money will not be applied under the provisions herein-before contained, such money, or such part thereof as last aforesaid, shall be applied, by or under the direction of the Commissioners, to indemnify against the rent-

charge granted in respect of such money the persons liable to pay the same, but so that no part of such money be paid to the owner upon whose application such money shall have been advanced, or his representatives, until all other persons liable to pay such rent-charge shall have been indemnified against the same or released therefrom; and for the purposes of this provision the Commissioners may invest all or any part of the money applicable to indemnity as aforesaid in the public funds, and may invest and accumulate the dividends arising from such investment, and may out of such monies, or the investments thereof, purchase any government annuity or annuities for any term of years, and may apply and dispose of such money, and such investments, dividends, and accumulations in repurchasing all or any part of the rent-charge, or otherwise apply the same to such indemnity as aforesaid as the circumstances may require: Provided always, that where part only of the money paid into any such bank as aforesaid has become applicable under the provisions herein-before contained, but the works in respect of which such money was so paid have been fully executed, or, part only of such works having been executed, the Commissioners are satisfied that such part thereof will independently of the part remaining unexecuted, produce an improvement in the yearly value of the land exceeding the whole amount of the rent charge, and that it will not be expedient to execute the remainder of such works, the part unapplied of such money shall be applied rateably to indemnify as well the owner upon whose application such money shall have been advanced as all the other persons liable to pay the rent-charge.

26. That the provisions of the said first-recited act as to upholding drains, and keeping clean and open the outfalls of drains, shall be deemed to be incorporated in this act, and shall apply to the drains and outfalls to be made under the provisions herein contained.

27. That it shall be lawful for the Commissioners and they are hereby required to keep a register of all certificates of allowances of applications or other certificates which they shall issue under this act, and of all grants of and orders for apportionment of rent-charges; and the said register may be perused at all reasonable times by any person interested in the land charged by any such grant, or to which any such certificate or order of appointment shall relate.

28. That all notices by the said recited acts or this act directed or authorized to be given by the Commissioners may be given by the secretary of the Commissioners, or any person authorized in that behalf by the Commissioners.

29. That where a description of land by reference to any former or other document, whether issued in pursuance of this act or not, shall be considered by the Commissioners to be otherwise sufficient for the purposes of any certificate, grant, or order to be issued under this act, it shall not be necessary for the pur-

poses of registration or for any other purpose that the land to be affected by any such certificate, grant, or order shall be specified or described therein otherwise than by reference to some such former or other document as aforesaid.

30. And for the amendment of the said first-recited act, be it enacted, That in every case in which any owner of land charged with a rent-charge under the provisions thereof shall redeem such rent-charge in manner therein provided, it shall be lawful for the Commissioners, by the certificate of such redemption, to declare that the annual rent-charge shall continue a charge upon such land for the remainder of the term for which the same was created, and shall be payable to the said owner of such land, his executors, administrators, or assigns, and the same shall thereupon so continue to be a charge, and be transmissible as personal estate.

31. And whereas doubts having been entertained under the said recited acts whether all the lands specified or comprised in the provisional certificate issued under the said acts must not be comprised in the certificate of advance, or in each and every or some or one of the certificates of advance, where more than one is issued under the same acts in respect of the works referred to in the same provisional certificate: Now be it enacted and declared, That it shall be necessary to include in the certificate or respective certificates for advance to be issued under the said acts in respect of the works referred to in any provisional certificate, such part or parts only of the lands specified or comprised in such provisional certificate as the said Commissioners shall consider proper and sufficient to be comprised in such certificate of advance or respective certificates of advance, and the provisions of the said thirdly-recited act as to description by reference shall, as far as circumstances will admit, apply to the land actually comprised in any such certificate of advance, as effectually as if the same had comprised the whole of the lands specified or comprised in the provisional certificate.

32. That in the interpretation of this act the words "the Commissioners" or "the said Commissioners" shall, as regards lands in Great Britain, mean the Inclosure Commissioners for England and Wales, and as regards lands in Ireland, the said Commissioners of public works in Ireland; the words "owner of land" shall, as to land in England and Wales, have the same meaning for the purposes of this act as is given to the words "owner of lands" in the said act of the 7th year of William the 4th for the Commutation of Tithes in England and Wales, for the purpose of such act; and the words "owner of land" shall, as to land in Scotland, mean or include every fiar, liferenter, heir of entail, husband of a married woman seised in her own right, tutor, curator, and other guardian for any infant, minor, lunatic, or idiot, fatuous or furious person, and every trustee who respectively shall be in the

actual possession of the land or in receipt of the rents payable on the tacks, leases, or tenancies of the tenants in the actual possession thereof, and shall include any corporation; and the words "owner of land" shall, as to lands in Ireland, mean and include such person as under the said act passed in the 1 & 2 Vict. c. 109, intitled "An Act to abolish Compositions for Tithes in Ireland, and to substitute Rent-charges in lieu thereof," shall have the first estate of inheritance or other estate on interest equivalent to a perpetual estate or interest therein; and also any tenant in dower or by the curtesy, or any person having under the limitations of any settlement by deed, will, act of parliament, or otherwise, any estate for life or other particular estate thereby created or limited out of or in any estate of inheritance, or out of or in any such estate or interest as by or under the said last-mentioned act is to be deemed equivalent to a perpetual estate or interest, and also a husband of a married woman seised in her own right, and the guardian of any infant, or committee of any idiot or lunatic, and any trustee or trustees in the actual possession or in the receipt of the rents as to any such estate or interest as last aforesaid, and shall include a corporation; and the word "person" shall mean and include any body corporate, aggregate, or sole, as well as an individual; and any word importing the singular number only shall also mean and include the plural number, and any word importing the masculine gender shall also import the feminine gender.

HISTORICAL SKETCHES OF THE LAW.

THE INNS OF COURT.

OUR last extract from the regulations of the Inns of Court, closed with the reign of Elizabeth. We come next to the time of James the 1st, in the 12th year of whose reign we find it recited in one of the orders relating to the Inns of Court—

"That the institution of these societies was ordained chiefly for the profession of the law, and in a second degree for the education of the sons and youth of riper years of the nobility and gentry of this realm; and in no sort for the lodging or abode of gentlemen of the country, which, if it should be suffered were to disparage the said societies and to turn them from *hospitium* to *diversoria*, it was therefore ordered—

"That no knight or gentleman, foreigner or discontinuer, shall be admitted or allowed to lodge in any of the societies aforesaid, or to be in common, except he be an allowed utter barrister."

Again it is recited, that the ever great multitude in any vocation or profession

doth but bring the same into contempt, and that an excessive number of lawyers may have a farther inconvenience in respect of multiplying of needless suits, it is therefore ordered—

"That there shall not be called to the barr in any one year, by readers or benchers in any one society, above the number of *eight*," or according to that proportion, being of continuance, and having done the exercises according to the orders of the several houses."

It is also stated, that the over early and hasty practice of utter barristers doth make them less grounded and sufficient, whereby the law may be disgraced and the client prejudiced.

"Therefore it is ordered, That for the time to come no utter barrister begin to practise publicly at any barr at Westminster, until he hath been three years at the barr, except such utter barrister that have been readers in some houses of Chancery."

Reciting also, that the maintaining of the readings in Innes of Court and Chancery in their due execution, is a principal means to breed and increase learning, it is ordered—

"That no single reader in any house of Court, shall give over his reading before Wednesday in the third week. And that the readers of every house of Chancery shall read in person, and not by deputy, both in Term and vacation, except by the deputation by the bench of the Term before."

In the 6th of Charles the 1st it was ordered, that the Innes of Chancery shall hold their government subordinate to the benchers of the Innes of Court unto which they belong. Amongst other matters, it was directed, that

"In case any attorney, clerk, or officer of any Court of Justice, being of any of the Innes of Chancery, shall withstand the direction given by the benchers of Court, upon complaint of the Innes of Chancery, shall withstand the direction given by the benchers of Court, upon complaint thereof to the judges of the Court in which he shall serve, he shall be severely punished, either by fore-judging from the Court, or otherwise as the case shall deserve."

In the Society of Gray's Inn it was also ordered—

"1. None shall be called to the bar but such as be of convenient continuance, and have performed *exercises* three years before they be called, that is to say, have gone abroad to grand moots six times, have mooted at the utter bar in the library six times, and have

put cases at belts in Term six times, and thereof bring due certificate—of the first, from the reader, the ancient that goeth with him, and the principal in the Innes of Chancery; of the second, from those two that sit at the bench; and of the third, from those three that sit at the bolt.

"2. The utter barristers which shall be called at one reading shall not exceed the number of four, and if the reader presume to swear any more, the reader shall be fined by the bench; and such as shall be sworn after the number filled shall be disabled to be confirmed, and their names shall be given up to the judges that they may be restrained from practice. And of the four that shall be called by the readers, if the bench do disallow any, they likewise shall be disabled, and their names also given up to the judges to the intent aforesaid.

"3. None shall be called to read in regard of antiquity or course, but such as are men of good sufficiency for their *learning, credit, and integrity* to serve in the commonwealth; and none shall be admitted to read single that hath not been a continuer both in four terms and two readings, by the space of one whole year next before his reading. And, nevertheless, it is not meant but their serving two vacations after the reading according to former orders shall stand and continue.

"4. The names of such as have double, or shall read double, shall be given to the judges who had promised to give them pre-eminences of hearing, after serjeants and her Majesty's learned counsell, to the end to draw them thereto the more; yet, nevertheless, the calling to double readings, or otherwise to dispense therewith is left as heretofore to the discretion of the bench.

"5. Every single reader shall continue out his reading until the Friday in the third week, and shall observe former orders touching moderating of excess in dyet.

"6. No utter barrister shall be called by letters, or for any reward, and any one that shall bring any letter, or use any corrupt means, shall be *ipso facto* disabled, and his name shall be given up to the judges, to the end that he may be restrained from practice; and the reader that calleth him shall be fined by the bench, and his name also given to the judges for his further rebuke.

"7. The readers in Court and Chancery shall make their cases short, not containing above three points, and in reading in Court as much upon the statutes as may be.

"8. The pleadings in moots both in the Hall and Library and Innes of Chancery, by the inner barristers shall be rehearsed without book, and in no wise read; and so likewise by the first of the utter barristers, and by the puisne of the bench, be he reader or otherwise; and not to go to the case without the pleading recited."

* Four times that number are now called almost every Term in several of the Inns of Court.

We also find it directed that none should be admitted to *plead at any of the Courts*

at Westminster, or to subscribe any action, bill, or plea, unless he be a reader, or benchman in Court, or five years utter barristers, and continuing that time in exercise of learning or a reader in Chancery two years at the least. So none were to be allowed to plead before the justices of assizes, except he be allowed for a pleader in the Courts at Westminster, or shall be allowed by the justices of assizes to plead before them.

LAW OF ATTORNEYS.

ANSWERING MATTERS OF AFFIDAVITS.

ACCORDING to the old practice, an attorney was frequently required, upon motions involving his professional conduct, to answer the matters of the affidavits filed against him; but by a decision of the Court of Common Pleas on the 7th May, 1847, the practice appears to be altered.

In a recent treatise,* it is stated that—

“The Courts will, in many cases, when the alleged conduct of an attorney is not sufficient to justify the extreme punishment of dismissal, call upon him in his official capacity to answer affidavits containing charges against him, as to matters entrusted to him in that capacity. *Re Knight*, 1 Bingh. 91; *Parker v. Marshall*, Loff. 271.

“It is the practice of the Courts, in the exercise of this power, to give the attorney complained against full time to answer the charge against him, in the same term in which it is made, and it cannot, therefore, be made on the last day of term, (*Baily v. Jones*, 1 Chitt. Rep. 744; *Cass v. Nibbets*, ib. 745,) and, for obvious reasons, the application will not be granted when the charge amounts to an indictable offence, for attorneys cannot, any more than other persons, be called on to criminate themselves, (*Knight v. Hall*, 1 Bingh. 143; *Short v. Pratt*, 1 Bingh. 102; *Robertson v. Mills*, 1 Dowl. 727, N. S.; *Stephens v. Hill*, ib. 669; 10 M. & W. 28; 11 L. J. (N. S.) 329, Exch.); but, in answering the affidavits, it is not sufficient merely to deny the charges, but to explain the transaction to which it relates; for an incredible story would subject an attorney to an attachment. (*Re Crossley*, 6 T. R. 701.)”

In *Belcher and others v. Goodered*, 4 Com. B. 478, on an application against an attorney to set aside a judgment of *non pros.* with costs, and to answer the matters of the affidavit, *Wilde, C. J.*, (p. 474) said, “You may take the first branch of the rule, but not the last. The Courts have long since ceased to grant rules calling upon attorneys to answer the matters of an affi-

davit. The usual course is, first to dispose of that which relates to the suit, and then, if the circumstances warrant it, to move to strike the attorneys off the roll.”

This is evidently a just and proper rule for the protection of attorneys; they might otherwise be harassed by speculative motions to gratify that feeling of hostility against them which too often prevails. The questions in a client's cause should not be mixed up with personal applications against the attorney himself. If he be amenable to the censure of the Court, the complaint should be separately heard, and of course at the peril of costs if found to be ill-founded. The other decisions relating to the Law of Attorneys, contained in the “regular” reports, recently published, will be found in our *Analytical Digest*, at p. 453, *post*.

NOTES ON THE CIRCUIT.

HARD CASES MAKE BAD LAW.

On a trial on the Western Circuit, on the 21st July, relating to the validity of a lease not executed, as it was alleged, with due formalities; and in which it was attempted to influence the jury by the consideration of the hardship of the case, Mr. Justice *Cresswell*, on summing up said, he advised the jury to dismiss from their minds all that had been said about the hardship of the case; for he had been in the profession a good many years, and had often heard a saying that “hard cases made bad law”—the meaning of which was, that when once people began to consider the hardship of particular cases instead of general rules of law, they would get into mischief and give bad verdicts—and they could never know what was behind in any case of this sort; it might be a hard case—they could only take the case as it was put by the counsel. One man had a property for life, and another was to have it after his death; but if the tenant for life went through certain formalities, he was entitled to convey an interest to some other person after his own death, and against the person who should succeed him in the reversion. Now, why should there be any favour shown to the tenant for life or his lessee, any more than to the person who came in after? It was the same case as that of a will. A man might convey his property away if he pleased, and deprive his immediate heir, but his will must be executed with certain formalities; but if he did not do so strictly, why should they wish the will to take effect to divert the property from the course of descent pointed out by the law of the land? The heir-at-law might think himself hardly dealt with if his ancestor made a will to take away his estate; and so the devisee might think it hard if the will were not executed in due form. The only way was to administer the law as they found it, and if the law was a bad one, let it be altered by those who had the power to make laws. *Doe d. Biddulph v. Courtney*.

* Pulling's Law of Attorneys, p. 223.

LEGAL MISCELLANEA.

THE CIRCUIT IN THE REIGN OF CHAS. II.

THE judges on Circuit, with the whole body of barristers, attorneys, clerks, and serving men rode on horseback from Newcastle to Carlisle armed, and escorted by a strong guard under the command of the sheriffs. It was necessary to carry provisions, for the country was a wilderness which afforded no supplies. The spot where the cavalcade halted to dine under an immense oak is not yet forgotten. [Qu. the locality of this oak.]

Within the memory of some who are still living, the sportsman wandered in pursuit of game to the sources of the Tyne, found the heaths round Keeldar Castle peopled by a race scarcely less savage than the Indians of California, and heard with surprise the half-naked women chaunting a wild measure, while the men with brandished dirks danced a war dance. (See Sir W. Scott's Journal, Oct. 7, 1827, in his *Life* by Lockhart.) 1 *Macaulay's History of England*, 285.

SIR EDWARD COKE AND THE DOCTORS.

Sir Edward Coke being very infirm in body, a friend of his sent him two or three doctors to regulate his health, whom he told that he had never taken physic since he was born, and would not now begin, and that he had now upon him a disease which all the drugs of Asia, the gold of Africa, the silver of America, nor all the doctors could cure,—old age.—Letter from the Rev. Mr. Mead, Jan. 30, 1630, 1. *Court and Times of Charles the First*, 2 vol., 93, 4.

WHEN OF AGE?—A PARADOX.

That of two persons born three minutes apart, one may attain majority three days before the other.

Thus, twins born within a few seconds of each other, one attains his age and wills away his property, whilst the other who survives him just three whole days, shall die a minor.

Solution.—They were born at midnight between February and March, 1827.

Suppose another child to be born the following night, he may attain his majority as the last of the twins.

Suppose, again, another child to be born on the night previous to the birth of the twine, he might become of age within a second or two of the 25th February, 1848.

To the non-professional reader it might appear strange that a person attains majority from 24 to just 48 hours before he has actually lived 21 years in the world, for he becomes of age for all legal purposes on the first stroke of the midnight hour of the day preceding the anniversary of his nativity, and if he should then chance to be in a more easterly longitude than at the place of his birth, of course the time would be so much anticipated.

Hence it will be seen by the foregoing paradox, that whilst the first of the group of those four children attained his majority, within a second of the close of the day of the 25th February, 1848, the last of such group did not enter the world till the 2nd March, 1827, and the present year being the calary of the 29th February, makes it in this instance the sixth day.

Hence, also, will be seen the propriety, and it might chance to become the imperious necessity, of parents particularly noting (so as to admit of legal proof) the precise period of the birth of their children, which the present general registration system affords the opportunity of doing, and thereby of avoiding much trouble, doubt, litigation, and expense, which might eventually occur. D. W.

BLACKSTONE'S COMMENTARIES.—USE OF PORT WINE.

Dr. Scott (Lord Stowell) talked of its having been said, that Addison wrote some of his best papers in the Spectator when warm with wine: Dr. Johnson did not seem willing to admit this. Dr. Scott, as a confirmation of it, related that Blackstone, a sober man, composed his "Commentaries" with a bottle of port before him, and found his mind invigorated and supported in the fatigues of his great work by a moderate use of it.—*Boswell's Life of Johnson* by Croker, p. 67.

BARRINGTON'S STATUTES.—DR. JOHNSON.

I am happy to mention another instance of his seeking after a man of merit: soon after the Hon. Daines Barrington published his excellent *Observations on the Statutes*, (4to. ed. 1766.) Johnson waited on that worthy and learned gentleman, and having told him his name, courteously said, "I have read your book, sir, with great pleasure, and wish to be better known to you." Thus began an acquaintance which was continued with mutual regard as long as Johnson lived. Barrington died March 16, 1800.—*Boswell's Life of Johnson* by Croker, p. 160.

DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From 21st August, to Sept. 28th, 1849, both inclusive, with dates when gazetted.

Cope, Edward, and Edward Chantler Faulkner, Manchester, Attorneys, Solicitors, and Conveyancers. Sept. 18.

Davies, Charles, and Thomas, Hans Edwards, Southampton, Attorneys and Solicitors. Sept. 4.

Fawcett, William, of Yarm, George Octavius Wray, of Stokesley, and William Garbutt, late of Yarm and Stokesley, (deceased,) Attorneys and Solicitors at Yarm and Stokesley. Sept. 18.

Harpur, Henry, Samuel Shoen, and Joseph Humphrey Grant, Kensington Cross, Surrey,

Attorneys and Solicitors, as far as regards the said Henry Harpur. Sept. 4.

Harris, William Roberts, and Thomas John Winter, 15, Essex Street, Strand, Attorneys and Solicitors. Sept. 21.

Prichard, Charles Edward, and Edward Russell Ingram, Stowport, Attorneys and Solicitors. Sept. 11.

Williams, John, and Charles Atkins Collins, 1, Verulam Buildings, Gray's Inn. Attorneys and Solicitors. Sept. 14.

PERPETUAL COMMISSIONERS.

Appointed under the Fines' and Recoveries' Act, with dates when gazetted.

Bowen, William, of Stafford, in and for the county of Stafford. Sept. 25.

Maples, Ashley, of Spalding, in and for the parts of Holland, in the county of Lincoln, also in and for the parts of Kesteven, in the same county. Sept. 21.

Palmer, Henry Andrews, of the city of Bristol, in and for the city of Bristol and county of the same city, also in and for the counties of Somerset and Gloucester. Sept. 25.

Tassell, James, of Feversham in and for the county of Kent. Sept. 28.

Wreford, Robert, of Exeter, in and for the

city and county of the city of Exeter, also in and for the county of Devon. Sept. 18.

MASTERS EXTRAORDINARY IN CHANCERY.

From 21st August, to 28th Sept. 1849, both inclusive, with dates when gazetted.

Adams, Henry Cranstoun, Exmouth. Sept. 28.

Chandler, Thomas Whitty, Sherborne. Sept. 25.

Colyer, Charles, Dartford. August 31.

Jacomb, Frederick William, Huddersfield. Sept. 21.

Simonds, Francis, Shepton Mallet. August 31.

Slaney, Robert, Newcastle-under-Lyne. Aug. 21.

LAW APPOINTMENTS.

The Queen has been pleased to appoint John Elijah Blunt, Esq., and James Hill, Esq., Barristers-at-Law, to be two of her Majesty's Commissioners for inquiring into those cases which were investigated by, and reported upon by the Charity Commissioners, but not certified by the Attorney-General.

RECENT DECISIONS IN THE SUPERIOR COURTS.

AND SHORT NOTES OF CASES.

HOUSE OF LORDS.

Rowley and others v. Adams and others. May 8, 22, 1848. July 27, 1849.

EXECUTORS.—LOSS OF TESTATOR'S PROPERTY.—LIABILITY.

Where it did not appear that a testator's surplus capital in a brewery, carried on afterwards by his son, could have been realized without putting an end to the business, and the state of the assets and liabilities was uncertain from the loss of the books of accounts, and the business proved insolvent and insufficient to pay two legacies: Held, that the executors were not personally liable.

THE testator, Henry Wyatt, a brewer in Portpool Lane, Gray's Inn Road, by his will, dated in 1826, gave his surplus capital in his business to the respondents, as his trustees and executors in trust, to invest and pay the interest to his widow, and at her decease he directed two sums of 12,000*l.* to be set apart for his two daughters and their children. The trustees, however, at the testator's death, allowed the sons to carry on the business, and the legacies were suffered to remain in their hands. An administration suit was afterwards instituted, upon differences arising between the sons, but was abandoned. In Jan. 1828, the partnership was dissolved, and the business subsequently sold. Upon its being found to be insolvent and in-

sufficient to pay the legacies, this suit was instituted in 1831, to charge the executors personally. The Master of the Rolls had made an order for an account, but the Master was unable to take the accounts by reason of the loss or destruction of the books of account; he had, however, found that the testator's surplus monies, besides his share in the capital in the brewery, exceeded the sum of 48,000*l.*, and also that the executors might, with due diligence, have possessed themselves of sufficient property to pay the legacies. The Court, on exceptions to the Master's report, had held, that as the testator's surplus property could not have been realized without putting an end to the business, which the executors were not bound to do, and the state of the assets and liabilities were more matter of conjecture than proof, they were discharged from liability. Upon appeal to the Lord Chancellor (Lyndhurst), this order was affirmed, whereupon this appeal was presented.

The Master of the Rolls read the judgment of the Lord Chancellor, who was unable to attend, which, after stating the facts and reviewing the several proceedings in the cause, held that the executors were not liable.

Lord Brougham having moved the judgment of the House, that the appeal be dismissed with costs, and Lord Campbell and Lord Langdale having concurred, the appeal was dismissed accordingly.

Vice-Chancellor of England.

Collett v. Maule. July 6, 1849.

ACCOUNTANT GENERAL'S OFFICE.—PAYMENT OF MONEY OUT OF COURT UNDER DECREE.—PRACTICE.

The practice of the Accountant General's office as to the payment of money out of Court, under a decree to the parties entitled, is to defer the payment for a limited time, in order to afford parties claiming a lien thereon, time to apply to the Court for a stop order or an injunction.

A decree had been made in this case for the distribution of certain funds in Court. A petition was subsequently presented by a person claiming a lien for a stop order, but, being dismissed, a bill was filed to establish the lien and for an injunction. Under these circumstances the Accountant-General refused to pay out the funds, whereupon this application was made for a direction that the decree might be carried into effect.

Bethell and Daniel, in support of the application; Rolt and Grove, contra, stated, that the motion of injunction would be brought on in a day or two, and contended that no order should be made.

The Vice-Chancellor, after conferring with the Accountant-General, said that the practice was, when an application was made by a party to whom the transfer out of Court was to be made under a decree, that the payment was deferred for a few days, to ascertain whether there was any objection thereto, and to enable any objecting parties, without loss of time, to apply to the Court for a stop order. The application must therefore be refused.

In re Grand Trunk, or Stafford and Peterboro' Union Railway Company, Ex parte Apps.

July 18, 1849.

WINDING-UP ACT, 1848.—CONTRIBUTORY.

Motion refused to exclude a party's name from the list of contributories under the Winding-up Act, although he had received a final dividend out of the deposit paid, and had given up his scrip.

THIS railway was projected in 1845, with a proposed capital of one million sterling, in 50,000 shares of 20*l.* each, and a deposit made of 2*l.* 2*s.* per share. Mr. William Apps took shares, paying the deposit and signing the subscribers' agreement and parliamentary contract, and deposits were also paid on 17,000 shares. At a meeting of the shareholders on May 14, 1846, it was resolved that the company should be dissolved and a sum of 1*l.* 1*s.* was returned to the shareholders, and a final sum of 2*s.* 6*d.*, whereupon a release was given to the directors and the scrip held given up. A bill was subsequently filed under the 11 & 12 Vict. c. 45, for the winding up of the concern, and a reference was directed to the Master, who had included the name of William Apps in the list of contributories. This motion

was therefore made that the name should be struck out.

Rolt and Maule, in support of the motion, cited *Ex parte Morgan*, 1 Hall & Twells, 320; Bethell and Malins, contra, were not called upon.

The Vice-Chancellor held, that Mr. Apps was a contributory within the 3rd section of the 11 & 12 Vict. c. 46. He was associated with the provisional directors of the scheme, who had stated at the payment of the final dividend that they believed further liabilities would be incurred. There was no agreement by the directors to release Mr. Apps, and he was therefore liable as a contributory.

Application refused.

Lombe v. Stoughton. July 21, 1849.

MANSION-HOUSE AND "SUITABLE OFFICES," WHAT INCLUDED IN.

Where the testator directed his trustees to erect a "mansion-house and suitable offices fit for the residence of the owner" of his estates, it was held, that it included the addition of pleasure grounds and other proper ornamental parts of a country house.

THE testator, Sir John Lombe, by his will declared his intention to build a mansion-house and suitable offices fit for the residence of the owner of his estate, in the parish of Bylaugh, Norfolk, and he further directed that such should be erected by his trustees after his death, if not built in his lifetime. He however died without having built the mansion-house, and his trustees accordingly had obtained a reference to the Master to approve of the plan. The Master had certified estimates for carrying the plan into execution, and the question was, whether the words "suitable offices" would justify the addition of a garden and pleasure grounds.

The Solicitor-General, Bethell, J. Parker, Rolt, Malins, Rowdell Palmer, Messier, Toller, Follett, Fleming, and Bates appeared for the several parties.

The Vice-Chancellor held, that by the words "a mansion-house and suitable offices," the testator clearly intended such as would be fit for the owner of the estate, and that there must of necessity be accommodation in the way of pleasure grounds. There would therefore be a reference to the Master, to approve of proper ornamental additions to the plan.

Roe v. Gutheridge. Aug. 3, 1849.

PRACTICE.—HEARING OF CAUSE.

No cause can be heard hostilely after the last seal, and a motion to take a bill pro confesso was therefore refused.

THIS was a motion to take the bill in this cause *pro confesso*. The fourth and last seal before the vacation took place on Wednesday the 1st of August.

Prior, in support of the motion, Forster, contra,

The Vice-Chancellor held, that no cause could be heard hostilely after the last seal, and the motion was therefore refused.

Vice-Chancellor Knight Bruce.

In re Oxford and Worcester Extension and Chester Junction Railway Company. July 10, 1849.

PRODUCTION OF DOCUMENTS UNDER WINDING-UP ACT.—SOLICITOR'S LIEN.

The Court refused to compel solicitors to deliver up papers, &c., on which they had a lien for a bill of costs, to the official manager of an insolvent railway company, under the 11 & 12 Vict. c. 45, although such manager was willing to consent to an order that payment should be made of the bill out of the first money coming to his hands.

In this case, an order had been made (see ante, p. 314) discharging so much of the Master's order under the 11 & 12 Vict. c. 45, as directed the solicitors to deliver up to the official manager the documents in their custody on which they claimed a lien for costs. The official manager had since made an offer consenting to an order that payment of their bill of costs should be made out of the first moneys coming to his hands, upon their giving up their lien. The solicitors, however, declined to accede to the proposition, whereupon the present application was made for such an order.

Cairns, in support of the motion; *Terrell*, contra.

The Vice-Chancellor said, that the Court could not compel solicitors, having a sworn lien on papers, and from which they had neither discharged themselves nor been discharged, to produce the papers for the use of other parties. The official manager will incur no risk by paying the bill, if moneys are received, but if none are received, he is the party as between him and the solicitors to run the risk. The motion must therefore be refused.

In re Ipswich, Norwich, and Yarmouth Railway Company. July 13, 1849.

WINDING-UP ACT, 1848.—DISMISSAL OF PETITION.

A petition for winding up under the 11 & 12 Vict. c. 45, was discharged with costs, where it appeared the petitioner had withheld important facts from the knowledge of the Court, and the petition had not been served on the present petitioners, who were directors of the company. The objection having been made at the first meeting under the order before the Master, held, in sufficient time.

THIS was a petition by three of the directors of the above company, for the discharge of an order for winding up its affairs under the 11 & 12 Vict. c. 45, on the ground that the petition by Mr. Green, on which the order was granted, had withheld from the knowledge of the Court many circumstances, particularly that the direc-

tors had returned 25s. per share on the scheme being abandoned in 1846, and resolved to be wound up under Lord Dalhousie's Act, and a further sum of 4s. which all the shareholders but 27 had accepted, and the money was ready to be paid to them. It was also stated, that the former petition had not been served on the present petitioners and officers of the company, although the agent was well acquainted with their addresses.

Kenyon Parker, and *Hetherington*, in support of the petition, which was opposed by *Makins*, *Roxburgh*, and *W. Morris*.

The Vice-Chancellor said, that as the petitioner had omitted to state material facts which must be taken to have been within his knowledge, the petition must be discharged with costs. The objection having been made at the first meeting for prosecuting the order, was in sufficient time.

Buckley v. Buckley. July 21, 1849.

NEW TRUSTEE.—APPOINTMENT.

Upon the hearing of a bill for the removal of a surviving trustee and administration of the trusts of a will, the Court refused to appoint three new trustees. But intimated that upon a petition being presented, and an affidavit of fitness being made, they would be appointed without a reference, the estate being small.

This was a bill for the removal of a surviving trustee, and administration of the trusts of the will, but an arrangement had been made that a decree should be taken only for the appointment of new trustees, and that if the Court approved, the usual references should be waived, as the estate was small, and all the parties interested were before the Court.

Bacon, for the plaintiffs; *W. T. S. Daniel* and *Craig*, for the defendants.

The Vice-Chancellor said, that as at the hearing of a cause no affidavits could be received, the only decree that could be made was that asked by the petition. It may however be stated on the order, that all the parties waive the relief prayed by the bill, except the appointment of new trustees, and if a sufficient affidavit be made as to the fitness of the three trustees to be appointed, and of all parties interested being before the Court, the Court would appoint them upon petition without a reference.

Queen's Bench.

(Before the Four Judges.)

Gardner v. Slade. June 14, 1849.

MASTER AND SERVANT.—CHARACTER.—SLANDER.

Held, that an action for slander will not lie by a servant against a former master, where the words spoken have not been spoken maliciously, and the circumstances so stated only came to the master's knowledge after the character had been given; and held also,

that it was immaterial whether the communication was made at the time of giving the character or some time afterwards.

A RULE nisi had been obtained to set aside the verdict and enter a nonsuit in this case, pursuant to leave reserved. The plaintiff was formerly in the service of the defendant, who had communicated certain circumstances regarding the plaintiff's character to her new master, whereupon this action was brought to recover damages for the alleged slander.

Petersdorff against the rule; *Crowder* in support.

The Court said, that the law privileged a former master who spoke the truth regarding the character of a former servant, from liability. The communication might be made after the character had been given, if the circumstances came to his knowledge afterwards, and there was no proof that it was made maliciously. The rule must therefore be absolute to enter the nonsuit.

Prerogative Court.

(Coram Sir Herbert Jenner *Fust.*)

In re Mary Rush, deceased. July 3 and Aug. 7, 1849.

REVOCATION OF PROBATE.—FORGERY.

Upon a motion to revoke the probate of a codicil which was alleged to be a forgery:
Held, that the Court could not proceed upon the simple affidavit of a participes cri-

minis; but directed the motion to stand over, in order to compare the signature of the will and codicil, and upon the production of such affidavit stating that the signature to the codicil was a forgery, revoked the probate.

MARY RUSH died in Aug. 1848, and by her will gave the greater part of her property to the nine children of James Bloomfield Rush, upon their respectively attaining the age of 21 or marriage. By a supposed codicil, however, the property was not to be divided between the children until the youngest child arrived at the age of 21. The children elected their uncle as guardian, the personal estate not being administered at the time of Rush's execution for the murder of Mr. Jermy.

Dr. Addams (on July 3) applied for administration of the will, but to revoke the probate of the codicil, and produced an affidavit from Emily Sandford, in which the latter was alleged to be a forgery, she having attested it after the death of the testatrix.

The Court, however, refused, upon the simple affidavit of a participes criminis, to revoke the codicil, but directed the motion to stand over in order that the signatures to the will and codicil might be examined by skilful witnesses. The motion was now (August 7) renewed upon the affidavits of Mr. Durant and Mr. Wilkinson, who deposed that, according to their belief, the codicil was a forgery.

Dr. Addams in support.

The Court granted the motion.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Common Law.

LAW OF ATTORNEYS.

[For the previous Sections of this Series of the Digest in the present Volume, see,—

Privy Council:

Appeals, 88.

House of Lords:

Appeals, 171.

Courts of Bankruptcy, 211.

Courts of Equity:

Law of Costs, 234.

Law of Wills, 254.

Construction of Statutes, 271.

Law of Property and Conveyancing, 293.

Pleading, 334.

Principles of Equity, 352, 434.

Practice, pp. 375, 412.]

ACTION ON ACCOUNT STATED.

In an action for an attorney's charges, if the plaintiff fails on the count for work and labour, because no bill has been delivered, he cannot recover under a count upon an account

stated, though he proves that the charges were assented to by the client. *Brooks v. Bockett*, 9 Q. B. 847.

ANSWERING MATTERS OF AFFIDAVIT.

The Court will not grant a rule calling upon an attorney to answer the matters of an affidavit. *Belcher v. Goodered*, 4 C. B. 472.

APPOINTMENT OF ATTORNEYS.

Notice.—Where a party has conducted a cause in person, it is not necessary, in order to enable him to take a step in the cause by attorney, that he should obtain an order for the purpose, or that he should give the other side previous notice of the appointment of the attorney. Taking the step by attorney is in itself a sufficient notice to the opposite party of the appointment. *Jones v. King*, 5 D. & L. 412.

ARTICLED CLERK.

Return of premium.—The Court refused to order an attorney to repay any portion of a premium of 200 guineas received by him with an articulated clerk, who died within a month after he was articulated. *In re Thompson*, 1 Exch. R. 864.

CERTIFICATE.

1. *Renewal. — Notice.*—Where an attorney had omitted to take out a certificate for upwards of 10 years, and had given the notices required, in order to take it out at the end of the Term, pursuant to the *Regula Generalis*, Easter Term, 9 Vict.; the Court refused, although special grounds were stated for the application, to allow him, on the 1st day of Term, to take out his certificate forthwith. *Ex parte Barnes*, 5 D. & L. 294.

2. *Renewal refused. — Conspiracy.*—The Court refused to allow an attorney to take out his certificate, where it appeared that he had been found guilty on an indictment for a conspiracy to procure a fiat, and had been sentenced to, and had undergone, 18 months' imprisonment; although the motion was unopposed,* and the fact appeared only on his own affidavit, and he swore he was not guilty of the offence; and it had occurred 18 years ago, since which time he had been employed as law clerk in the offices of several attorneys. *Ex parte Grey*, 5 D. & L. 275.

DELIVERY OF BILL.

1. *Where bill delivered before 6 & 7 Vict. c. 73.*—*Quære*, whether an action may be commenced since the statute 6 & 7 Vict. c. 73, without delivery of a new bill, where a bill has been delivered, and the charges were taxable, before the statute. *Brooks v. Brockett*, 9 Q. B. 847.

2. *Account stated.—Confession and avoidance.*—A plea, to an action of assumpsit, that the action is for an attorney's charges, and was brought since the passing of statute 6 & 7 Vict. c. 73, and that no bill was delivered, is good, though it do not show that the charges are such as were taxable before the statute, or that the business was done since. So held on special demurrer.

To a count on an account stated, it is a good plea, that the account was stated solely of and concerning charges for work done as an attorney, and that no bill was delivered.

In such pleas, it is a sufficient confession to state that the action is brought to recover the amount of charges "by the plaintiff claimed and demanded to be due to him from the defendant for work done," &c., "and that the work was done by the plaintiff for defendant as his attorney, and not otherwise." So held on special demurrer. *Scadding v. Eyles*, 9 Q. B. 858.

JUDGMENT ON ALLOCATUR.

A judge's order, obtained at the instance of the client, referred an attorney's bill for taxation, reserving the question of retainer. The Master, by consent, decided that question in

favour of the attorney, and made his allocatur for a certain amount. There was no undertaking to pay by the client in the order: *Held*, that the attorney was entitled to have judgment entered up for the amount of the allocatur, under the 6 & 7 Vict. c. 73, s. 43. *Ex parte Lowless*, 5 D. & L. 793.

LIABILITY TO SHERIFF.

Costs of executing fi. fa.—The sheriff cannot recover his charges for executing a *fi. fa.* by action against the attorney, unless there be special circumstances from which a jury may infer an actual undertaking by the attorney to pay. *Maybery v. Mansfield*, 9 Q. B. 754.

LIEN.

Inspection of documents.—In an action by the allottee of railway shares against a managing director for the recovery of his deposit, the Court made absolute a rule for the plaintiff or his attorney to have liberty to inspect and take copies of the subscribers' agreement and parliamentary contract; upon an affidavit stating that the agreement and the contract had been signed by both the plaintiff and the defendant, and that they were in the hands of the defendant or his attorneys, and that the plaintiff could not safely frame his case or go to trial without such inspection and copies; notwithstanding that the defendant's attorneys claimed a lien on such deeds for their charges against the company. *Ley v. Barlow*, 5 D. & L. 375.

Cases cited in the judgment: *Hunter v. Leathley*, 10 B. & C. 838; *Stedman v. Arden*, 15 M. & W. 587; 4 D. & L. 16.

LIMITATIONS, STATUTE OF.

Taxation.—Defendant employed plaintiff, an attorney, in several transactions, and among others, in procuring him money to pay off a mortgage. In an action against a defendant on plaintiff's bill of costs, it appeared, by items in the bill, that he had made applications in several quarters for this purpose, but without success, after which he wrote to plaintiff, informing him what had been done, and requesting to know his wishes. This item bore date more than six years before action brought. The next, dated within six years, was:—"Paid the postage of your answer." By subsequent items it appeared that further endeavours were made by plaintiff to raise the money. Ultimately it was obtained: *Held*, that the transaction was not one in which the attorney's employment was continuous, and that the latter items did not draw after them the previous ones so as to take these out of the Statute of Limitations. *Phillips v. Broadley*, 9 Q. B. 744.

RESTORING TO ROLL.

Bribery of witness.—Where an attorney was charged with having, in the conduct of a certain cause, offered a bribe to a witness to depose to a particular fact, and the matter was referred to the Master to report upon; on his report that the charge was true, the attorney was ordered to be struck off the roll.

* The motion was not opposed by counsel but the malpractice appearing on the applicant's affidavit, the attention of the Court was called to the subject by the Incorporated Law Society.

On motion to rescind the rule striking him off the roll, the Court, after taking time to look at the affidavits, refused the application. *Ex parte Macey*, 5 D. & L. 276, n.

RETAINER.

1. *Overseers' liability*.—An order of removal made from the parish of C. to that of L. having been confirmed by an order of justices in Quarter Sessions, upon a preliminary objection, a rule nisi was obtained for a mandamus to enter continuances and hear the appeal. A copy of the rule was served on two of the defendants, R. D. and R. T., who then were churchwardens of C. R. T. afterwards, in conjunction with the then existing overseers of C., signed a retainer to the plaintiff, to act as their attorney in the matter of the mandamus, but countermanded it before anything was done by the plaintiff. R. D. did not interfere. Before the rule was argued, J. D. and W. E., the other defendants, were elected overseers, and R. D. and R. T. re-elected churchwardens. The plaintiff's clerk saw J. D. repeatedly about the rule, who asked how the matter was going on; he also repeatedly saw E. W., the other defendant, who was not so active. The plaintiff having delivered his bill of costs to one of them, they all expressed their readiness to pay, but said there was a grudge in the parish: *Held*, that the defendants were not jointly liable. *Marsh v. Davies*, 1 Exch. R. 668.

2. *Evidence*.—In assumpsit against a joint-stock company, (sued in the name of their secretary,) the first count of the declaration alleged that, in consideration that the plaintiff had agreed to become the permanent attorney and solicitor of the company, and to act as such, for reasonable reward, &c., the company promised the plaintiff to retain and employ him as such permanent attorney, &c.; and that, in pursuance of the agreement, the company did in fact retain and employ him, and the plaintiff acted, and had always from thence been ready and willing to act, as the permanent attorney of the company; and alleged, for breach, that the company wrongfully and without any just or reasonable cause for so doing, discharged the plaintiff from being or acting as such attorney, &c.: *Held*, that this count was not supported by proof of a resolution of the directors, that the plaintiff "be appointed permanent solicitor to the institution,"—the word permanent denoting, in such resolution, no more than a general employment, as contradistinguished from an occasional or special employment.

The second count alleged that it was agreed between the plaintiff and the company that, from a certain day, the plaintiff, as the attorney of the company, should receive and accept a salary of 100*l.* per annum, in lieu of rendering an annual bill of costs for the business transacted by him for the company; and averred that, the said agreement being so made, in consideration that the plaintiff had, at the request of the company, promised the company

to perform and fulfil the same in all things on his part, the company promised the plaintiff to perform and fulfil the same in all things on their part, and to retain and employ him as such attorney of the company, on the terms aforesaid; and assigned for breach, that the company did not continue to employ the plaintiff as such attorney, but wrongfully, and without reasonable cause, dismissed him from such employment, &c.: *Held*, (but reversed by the Exchequer Chamber, 5 C. B. 498.) that the agreement did not necessarily imply a promise by the company to employ the plaintiff; and that, the consideration being exhausted by the mutual promises, there was nothing to sustain the latter branch of the company's promise, and that the count was bad in arrest of judgment. *Elderton v. Emmens*, 4 C. B. 479.

STRIKING OFF ROLL.

Rule nisi.—A rule to strike an attorney off the Roll of this Court, on affidavit that he has been convicted of a misdemeanor in the Queen's Bench, and struck off the Roll of that Court, is a rule nisi, which makes itself absolute, unless cause be shown within the time prescribed. *In re Charles Wright*, 1 Exch. R. 658; S. C. 5 D. & L. 394.

TAXATION.

1. *Effect of assent to judge's order for taxation*.—*Set-off of allocatur for refunding*.—One B., to whom a mortgage had been transferred, commenced an action of ejectment and other proceedings to enforce payment. Plaintiff acted as his attorney; and proceedings were stayed on condition, among others, that defendant, (who was not a party on the record in the ejectment,) should pay the now plaintiff his bill of costs delivered to B. Defendant paid plaintiff the bill, but afterwards (and before stat. 6 & 7 Vict. c. 73.) obtained a judge's order for taxation of this latter bill, with a direction that any sum over-paid should be refunded. Plaintiff gave no consent to the order; but he attended the taxation and made a new claim, which was allowed; and he was ordered by the allocatur to refund 10*l.* as over-paid.

Held, that in the action by plaintiff against defendant on his bill of costs, the 10*l.* could not be set-off as money had and received to defendant's use; a judge's order, without consent, being no ground for a claim in the nature of an action of contract. *Phillips v. Broadley*, 9 Q. B. 744.

2. *Retrospective effect of 6 & 7 Vict. c. 73*.—The clause (sect. 37) of stat. 6 & 7 Vict. c. 73, making attorneys' bills taxable though the business was all transacted out of Court, is retrospective; but delivery of a bill for such business, done before the act passed, is not valid, unless the bill was delivered since the passing of the act, as well as one month before commencing an action. *Brooks v. Bockett*, 9 Q. B. 847.

Case cited in the judgment: *Soadding v. Eyles*, 9 Q. B. 858.

Law of Costs.**CAUSE, COSTS OF.**

1. To a declaration containing two special counts on two different contracts, a count for work and labour, and a count upon an account stated, the defendant pleaded, as to the whole, *non assumpsit*, to the 1st and 2nd counts respectively, pleas in justification; and to the 4th, a plea of payment.

The verdict was entered for the defendant upon so much of the issue on *non assumpsit* as related to the 1st, 3rd, and 4th counts, and for the plaintiff upon the special pleas; and the Court arrested judgment upon the 2nd count, in respect of which a verdict had been found for the plaintiff upon the *non assumpsit*.

Held, that the defendant was entitled to the general costs of the cause.

Held, also, that the Master properly disallowed the plaintiff the expenses of witnesses called by him in support of, but not *exclusively* applicable to, the issue upon which he was successful. *James v. Brook*, 16 Law J., N. S., Q. B., 168, disapproved of. *Elderton v. Emmons*, 4 C. B. 498; S. C. 5 D. & L. 489.

Cases cited in the judgment: *Day v. Hanks*, 3 T. R. 654; *Thornton v. Williamson*, 13 East, 191; *Cress v. Johnson*, 9 B. & C. 613; 4 M. & R. 290; *Lardner v. Dick*, 2 Cr. & M. 389; 2 Dowl. P. C. 333; *Knight v. Woore*, 5 N. C. 534; 4 Scott, 360; 5 Dowl. P. C. 487; *Cropper v. Elwell*, 4 M. & W. 21.

2. A party succeeding on an issue which entitles him to the *postea* and the general costs of the cause, is entitled to the costs of all the witnesses attending to prove that issue, whether their evidences apply to any other issue or not. But the opposite party is entitled only to the costs of such witnesses as attend solely to prove the issue on which he succeeds, and if they all attend to prove an issue, on which he fails, he is not entitled to any costs in respect of them. *Walby v. Brown*, 5 D. & C. 740.

CONSENT RULE.

The undertaking of the lessor of the plaintiff, in the common consent rule, to pay costs, is only personal, and cannot be enforced at the instance of the defendant's administrator. *Doe d. Harrison v. Hampson*, 5 D. & L. 484.

Cases cited in the judgment: *Thruston v. Bedwell*, 2 Will. 7; *Doe d. Pain v. Grundy*, 1 B. & C. 284; 2 D. & R. 437.

DAY, COSTS OF.

1. After the jury were sworn to try a cause, it was discovered, that through the mistake of the clerk of the plaintiff's attorney, a replication to one of the pleas, and of the award of venire, were omitted in the Nisi Prius record; although the issue delivered was correct.

Held, that the judge had power to amend the record with the consent of the parties.

The defendants having refused to give their consent to any amendment being made, and the judge at Nisi Prius having thereupon ordered the jury to be discharged, the Court re-

fused, in the exercise of their discretion, to grant the defendants the costs of the day. *Sleeman v. Copper Miners' Company of England*, 5 D. & L. 451.

2. The rule for costs of the day being a rule absolute in the first instance, the opposite party is not bound to appear to show cause, although notice of the motion may be given to him; but may come afterwards and move to discharge the rule. *Sleeman v. Copper Miners' Company of England*, 5 D. & L. 451.

DAMAGES UNDER 40s.

Trespass.—The first count of the declaration was for trespasses committed in three closes, A., B., and C. The second count, for trespass in a fourth close. The defendant pleaded not guilty to the whole. He also pleaded to the first count, a public way over A., B., and C., and other pleas, and also the plea of public way, so far as it related to A. and B., and new assigned trespasses *extra viam* as to C. The jury found for the defendant on not guilty as to the second count, and also on the plea of public way as to closes A. and B. The plaintiff had a verdict on all the other issues, and on the new assignment, on which the jury assessed his damages at one farthing. The judge did not certify under the 3 & 4 Vict. c. 24: *Held*, that the plaintiff was entitled to have taxed for him the costs of the issues found in his favour as to closes A. and B.; but that under the 3 & 4 Vict. c. 24, he was not entitled to any costs upon any of the issues as to close C., with regard to which he had succeeded, but had recovered less than 40s. damages. *Sharland v. Soaring*, 5 D. & C. 178.

Cases cited in the judgment: *Newton v. Rowe*, 1 C. B. 187; *Doe d. Bowman v. Lewis*, 13 M. & W. 241; *Cox v. Thomson*, 2 C. & G. 498; *Richmond v. Johnson*, 7 East, 583.

DEMURRER.

See *Issues*.

INTERLOCUTORY.

See *Set off*.

ISSUES AFTER JUDGMENT ON DEMURRER.

In assumpsit on a special agreement, the defendant pleaded *non assumpsit*, and a special plea (going to the whole cause of action,) to which the plaintiff demurred. At the trial of the issue of fact, a verdict was found for the plaintiff, with 5*l.* damages; and the defendant afterwards obtained judgment on the demurrer to the special plea: *Held*, that the plaintiff was entitled to the costs of the trial of the issue of fact. *Clarke v. Allatt*, 4 C. B. 335.

Case cited in the judgment: *Bird v. Higginson*, 5 A. & E. 83; 6 N. & M. 791.

See *Several Issues*.

MARRIED WOMAN.

In an action of trespass by husband and wife, for an alleged false imprisonment of the latter, a verdict was found for the defendants. The plaintiffs obtained a rule nisi for a new

trial, which was discharged with costs. The female plaintiff afterwards obtained a rule nisi to amend the rule by striking out so much of it as directed costs to be paid by her, on the ground that she was no party to it, and that a married woman suing or being sued with her husband, is not liable to costs. The Court discharged such rule, with costs to be paid by the wife. *Newton v. Boodle*, 4 C. B. 359.

Cases cited in the judgment : *Newton v. Rowe*, 16 Law J., N. S., Q. B. 150; *Regina v. Johnson*, 5 Q. B. 335.

MOTIONS AND RULES.

Judgment for the defendants is signed on the 14th November, 1846, and, on the 9th of March, 1847, the costs in the cause are taxed : It is competent to the defendants afterwards to tax their costs of a rule for a new trial obtained by the plaintiffs on the 20th of November, 1846, and discharged, with costs, on the 15th of January, 1847, the costs of such rule not being costs in the cause. *Newton v. Boodle*, 4 C. B. 359.

PLEADING SEPARATELY.

Rule for new trial.—Two of the defendants pleaded separately to a rule for a new trial obtained by the plaintiffs, and discharged with costs, were represented by different counsel, though by the same attorney : *Held*, that they were not entitled to present for taxation separate bills of costs on the rule. *Newton v. Boodle*, 4 C. B. 359.

REVIEW OF TAXATION.

1. *Transcript of record.*—*Court of Error.*—This Court will not entertain an application to review the taxation of costs, after a transcript of the record has gone to the Court of Error. *Newton v. Boodle*, 4 C. B. 359.

2. *Amount less than 40s.*—The Court will not order a taxation to be reviewed, when the amount alleged to have been improperly allowed, is less than 40s. *Newton v. Boodle*, 4 C. B. 359.

3. *Commission abroad.*—The Master, in taxing the costs of a trial, having allowed a large sum for costs incurred in the execution of a commission for the examination of witnesses in India, without exercising any discretion as to the propriety of the particular charges : the Court directed him to review his taxation. *Stewart v. Steele*, 4 C. B. 460.

Cases referred by the reporters : *Clay v. Stevenson*, 3 A. & E. 807; 5 N. & M. 318; *Steinkellar v. Newton*, 1 Scott, N. R. 148; 8 Dowl. P. C. 579; 6 M. & G. 30 n. and 31 n.

RULES.

See *Motions*.

SECURITY FOR COSTS.

1. The Court refused to grant a rule, in an action of tort, compelling the plaintiff to give security for costs on the ground of his insolvency; no ground being shown for believing that the action was prosecuted for the benefit of the plaintiff's assignee. *Stead v. Williams*, 5 D. & L. 497.

2. A cause was removed by *certiorari* from the Court of the Lord Mayor of London. The defendant paid a sum of money into Court, in lieu of bail, and shortly afterwards obtained a rule for security for costs on the ground that the plaintiff resided out of England. The security for costs was never given, and a period of nearly two years elapsed without any proceeding in the cause. The Court, under these circumstances, made absolute a rule, calling on the plaintiff to give security for costs within a fortnight; otherwise the defendant was to be at liberty to take the money paid in lieu of bail out of Court. *Tassie v. Kennedy*, 5 D. & L. 587.

SET OFF.

Interlocutory costs.—*Semble*, that a party may set off interlocutory costs in an action, without an order of the Court or a judge. *Levy v. Drew*, 5 D. & L. 307.

SEVERAL ISSUES.

To a declaration containing three common counts, the defendant pleaded the general issue, and two special pleas. Each plea was directed to the whole declaration. The plaintiff had a verdict as to part of his demand on the first issue, and the defendants as to the residue. The second issue was found for the plaintiff, and the third for the defendant : *Held*, that as the defendant was entitled to the postea and the general costs, he was entitled to the costs of all witnesses attending to prove the third issue, whether their evidence applied to any other issue or not, and that he was also entitled to the costs of those who appeared to reduce the plaintiff's demand on the first issue, unless they attended to negative the second : that the plaintiff was entitled to the costs of the witnesses who appeared solely to prove the issues found for him under the first issue, and also the second issue, both or either of them. *Welby v. Brown*, 1 Exch. R. 770.

TAXATION.

See *Reviewing Taxation*.

TRESPASS AFTER NOTICE.

In trespass for placing stumps and stakes on the plaintiff's land, the defendant paid into Court 40s., which the plaintiff took out in satisfaction of that trespass. The plaintiff afterwards gave the defendant notice, that, unless he removed the stumps and stakes, a further action would be brought against him : *Held*, that the leaving the stumps and stakes on the land was a new trespass; that the plaintiff was entitled to full costs in an action for their continuance after the notice, though he recovered less than 40s., and the judge refused to certify that the trespass was wilful and malicious under the 3 & 4 Vict. c. 24, s. 2; and that the proper mode of obtaining such costs, was, by entering a suggestion on the record, under the third section, that the trespass was committed after notice. *Bowyer v. Cook*, 4 C. B. 236.

Cases cited in the judgment : *Hudson v. Nicholson*, 5 M. & W. 437; *Holmes v. Wilson*, 10 A. & E. 503.

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LAW REFORM.

LORD BROUGHAM'S LETTER TO SIR JAMES GRAHAM.

WHEN referring on a late occasion to Lord Brougham's pamphlet, we stated that it did not appear to be altogether unsuccessful in proving that the alterations made by the Commons' Committee were in every instance improvements; but it does appear to us he has signally failed in showing, that the changes made in the bill by the House of Commons, after it was sent from the Lords,—taken as a whole,—are not calculated to promote the practical utility of the measure, and to prevent its provisions from operating to the incalculable injury of public interests.

The instances enumerated by his lordship, in which the Digest was altered, are for the most part, of a formal and trifling nature, and although the changes afford a very appropriate and effective subject for the noble and learned lord's ridicule and sarcasm, they do not furnish any serious ground of complaint against the committee. Take the following extract, for example:—

"First of all, the Commons' Committee objected to the form of the digest. It was in articles and not in sections. It alarmed the sensibility of men accustomed to hold in abhorrence whatever partakes of Mr. Bentham's plan for amending the law. It looked, in short, like codification."

The committee were alarmed, and articles they would have none—it must be distributed into sections. Nay, Arabic numerals they would have none—all must be Roman.

The Roman numerals were

His lordship here states in a lengthened parenthesis, why he prefers "digest" to "code," and "digesting," to "codifying," but for the grounds of this preference, we must refer to the pamphlet itself.

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restored to their pride of place—*Article* was supplanted by *Section*. So far—and so far, so well, at least as regarded the resolution, *stare super vias antiquas*; however out of repair these roads might be. But they seem to have been found slippery too; for the committee stood not very steady upon them: changes were made by the enemies of all change; mere novelties introduced by the foes to all innovation; a dreadful omission was made in each section—no authority was stated for the enactment: 'Be it enacted,' was given somewhere about 40 times, instead of prefacing each of the 278 sections, and by what authority was not once stated from the second section to the last. I say nothing of the constant omission of the word '*further*,' though I fear me tender consciences, hardly recovered from the dread of Arabic numbers, may be troubled at this known and expressive term being left out. But my eyes are met by no less than 39 novelties (ominous number, by whatever numerals marked!), though happily of one and the same description:—the division of the whole acts into heads or branches, or I know not what fragments, heretofore unknown, or if known, certainly only known within the last few months; each division of sections being prefaced by the words '*And with respect to*,' so and so. I say not that this is incorrect, far from it; I say not that it is unauthorised by the bulky 'pamphlet' which the Lords sent down. On the contrary, it is a substitution for the divisions in that bill. But I only note this departure from all ancient usage as a proof that the committee could make such deviations, and therefore might have adopted the somewhat less considerable innovations which the Lords had sanctioned for the self-same purpose, for the sake of public convenience. Furthermore, in sect. ccviii. I find innovation enough to startle the most hardened law reformer, innovation alike in substance and in form—an invention of great merit, I admit, for its convenience, but of such novelty that a patent might well be claimed for it as something 'which others at the time did not use' (according to the statute of James I.). My Fines and Recoveries Act of 1833, (3 & 4 Wm. 4, c. 74), is referred to by the sections—I crave pardon, the committee, so

alarmed at *articles*, and so resolved to have *sections*, calls them *clauses*, which is a term belonging to bills, not to acts; and there are imported 17 of them, not in Arabic (heaven forbid!) but all in Roman numerals, imported however in so slovenly a fashion that I tremble for the reception the conveyancers may give to this section, or clause, or article—really, now, one gets confused by the vacillation of the committee in their technological principles. My only objection to this invention is its careless application, for no plan of reference can be more convenient if judiciously and accurately executed."

The worst complaint against the Committee in all this is, that they interfere with matters of little importance if not positive indifference, and used a very convenient mode of reference in a slovenly manner. A somewhat graver charge, however, is conveyed in the following paragraph:—

"The committee, however, were not content with altering the outward form and appearance of the Digest. They examined the phraseology—they conceived that they could improve it—they endeavoured to correct it by restoring the words of former acts, where the learned Commissioners had deliberately departed from these—they seemed altogether to forget that practice and decision, having in many cases affixed to the old words such meaning as the language chosen by the Commissioners conveyed, and the obscurity and uncertainty of the old words being removed by the new, the change, instead of an amendment, was a material injury. So, however, the Committee thought it expedient to proceed—and I stop not here to inquire how far their labours in a retrograde direction (under the influence of the sign with which the sun then rode) were effectual to injure the work of their truly learned and skilful predecessors."

As his lordship has not deemed it worth while here to point out any particular instances in which the changes made by the Committee were injurious, we may safely conclude that none such were within his immediate recollection. Let us add, that when even uncertain and obscure language in an act of parliament has had its meaning defined and settled by established practice and judicial decision, it may be safer and more judicious to adhere to words which have received such a construction, than to adopt other words, apparently clearer and more intelligible, but which might admit of a construction very different from that affixed to those for which they were intended as a substitute.

The strongest and most striking fact adverted to in Lord Brougham's Letter is, that the Irish Bankrupt Law Consolidation Bill, when it passed the Commons, contained

the very clauses which that house, at the suggestion of its Select Committee, struck out of the English Bankrupt Bill. It must be remembered, however, that the discredit of this inconsistency rests on the House not on the Committee; and that it is no reflection on the judgment or diligence of those who took so much pains to amend the English bill, if other members, who ought to have bestowed equal attention on the measure intended for the sister country, neglected their duty. As may be expected, the learned letter-writer not only makes the most of the discovery, but manufactures from it an opportunity of good-naturedly adverting to a *little Irish job*, which his patriotic keen-sightedness prevented. The whole passage is so characteristic that we copy it without abridgment:—

"But whence all this distrust which has so suddenly sprung up in the Commons—this reluctance to take anything upon trust, this determination to require that every word of a bill shall be weighed by their own members before receiving their sanction? How long has this been the rule of that House's proceedings? Above all, is it a general rule, applicable to all its legislative work? Or is it, peradventure, confined to this one case, this Bankrupt Law Digest? Why, there pass each session a hundred acts or more, and I will engage for it that no one sentence of one single act is ever sifted and scrutinised by either committee or house. To illustrate this position I need go no further than the late session, to the very time that the committee were sitting; nay, more, to the very subject they were sitting upon. At the moment of their discussion on the Bankrupt Law, a bill was passed through all its stages, without a word of discussion, and without being either referred to a select committee, or so much as mentioned in the house, except by the clerks at the table, when they read its title at each successive stage of its rapid progress. I allude to the Irish Bankruptcy Law Consolidation and Amendment Act, which its learned authors placed under my care when it came up to the Lords. It had been prepared under the authority of the Irish Chancellor, the Dublin Chamber of Commerce, and the Irish Bankrupt Commissioners—and entire confidence was reposed in the accuracy of the workmanship. But I was in no degree astonished to find that its authors had adopted and incorporated from my English bill the very provisions which the House of Commons had rejected, and accordingly up came from the same Commons two bills on the same subject—the one entirely different from the other. I was thus placed in a singular position by the Honourable the Commons. I was asked to use whatever little credit or influence I might have with the Lords to make them reject the provisions of their own bill, not because the Commons had refused to adopt them, but because the Commons had

unanimously approved them. A strange case of collision had arisen—that each of the two houses had unanimously passed certain provisions in one Bankrupt Law Bill; but then one of the houses had with equal unanimity rejected those very provisions in another Bankrupt Law Bill. So to reconcile the Commons with themselves, we were fain to give up our own clauses and make the two bills on the same subject-matter alike. I also took the opportunity of striking out a strange provision, which had, doubtless from inadvertency, crept into the Irish bill—namely, a grant for life of a place hitherto held during pleasure, to the near relation of one of the promoters of the bill, together with the grant to the same party of another place in reversion.”

Though his lordship constantly reiterates his complaint of the want of confidence manifested by the Committee, and is more than suspicious that an unusually large share of distrust was exhibited in respect of the Bankrupt Law Digest, it seems never to have entered into his imagination that the jealousy with which his handiwork was regarded could have been well-founded! Although Lord Brougham may have forgotten, it is not fit that the public or the guardians of the public purse should forget, that a Court of Bankruptcy with an expensive judicial staff was established under his lordship's auspices, which was found, after a short experiment, wholly unnecessary, and the ill-assorted judges of which were afterwards drafted off to other offices, in order that it might not be said, they continued to be paid large salaries without performing any public duty. The act which suggested Lord Brougham's pamphlet, when it came from the Lords, contained, and still contains, an admission of the disregard for economy which prevailed when existing appointments were made, for it expressly declares, that the present number of Town Commissioners is more than sufficient for the performance of the public duties devolving upon those functionaries, and specially provides that after the death or removal of the present fortunate possessors, a reduction is to take place to the extent of one-third, in the number of commissioners, registrars, &c. Moreover, it cannot be matter of surprise, that the Commons' Committee should have remembered, that to Lord Brougham the country is specially indebted within a few years for those notable experiments with the Law of Insolvency, which are known as the Protection Acts, and the Debtor and Creditors' Arrangement Act; as well as for repeated alterations in the Law of Bankruptcy. To say that these experiments have been altogether unsuccessful, would very

inadequately represent the fact. They have been denounced by every judge who has had the misfortune to be called upon to administer, or put a judicial construction upon their confused and inconsistent provisions, and are justly and generally regarded as a scandal to modern legislation.

With such evidence of Lord Brougham's skill and care in framing statutes *in pari materia*, can it be wondered at, or should the Commons' Committee be very severely blamed, if they scrutinized and examined any measure professing to relate to the Law of Bankruptcy, which came recommended by his lordship? It would be in vain to disguise, that if the bill had been introduced by the Chancellor, Lord Denman, or Lord Campbell, it would have been received in a very different spirit by the House of Commons. As it was, the only reasonable ground of complaint is, not that so much time was expended, but that a much longer time was not expended in a consideration of the details of a measure the importance of which can hardly be exaggerated.

We should not conclude without mentioning, that in addition to the Criminal Law Consolidation Bill, which it seems contains no less than 2,200 articles, Lord Brougham gives notice, that if he should be spared, he will submit next Session a measure, which if it be confined to the few provisions he has sketched out in the following paragraph, will be the least objectionable, and perhaps the most useful act, owing its existence to his lordship. The proposed measure is thus described, and introduced:—

“I shall expect the support of these great and even somewhat rash innovators [meaning the Commons' Committee] to a measure of small pretensions, but of good use, which I shall next Session (if I be spared so long) certainly lay before parliament; and which is more of a mechanical than a general description. I mean an enactment that any act passed, whether public or private, in any Session, may be altered, amended, or repealed during the same Session; that certain superfluous words may be omitted in all acts; and that every act, past or future, may be referred to in subsequent acts by the year of the reign, the chapter, and the section, without recital of the title, or of the matters referred to. Much prolixity and repetition, and no little expense, will thus be spared; nay, not a few blunders, very embarrassing to the Courts, will be prevented. The first of these provisions alone would save about 30 folio pages of the statutes each Session—the saving by the others would be considerably greater.”

If Lord Brougham would resolutely bind himself to bring in such a Bill as he has here described, and to confine its provisions to the objects above pointed out, there can be no doubt that it would meet with more general concurrence, and afford greater satisfaction than has usually followed from his legislative labours.

NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

PETTY BAG OFFICE AMENDMENT ACT.

12 & 13 VICT. c. 109.

It has been deemed expedient to repeal some of the provisions of the 11 & 12 Vict. c. 94, regulating the Office of the Petty Bag in the Court of Chancery, the practice of the Common Law side of that Court, and the Enrolment Office of the Court, and to make other provisions in lieu thereof. It is therefore enacted—

1. That the 11 & 12 Vict. c. 94, be repealed, except so much as relates to abolishing the Offices of Senior, Second, and Third Clerks of the Petty Bag, and providing compensation to the Senior and Second Clerk, and to the appointment of "The Clerk of the Petty Bag."

2. The Clerk of the Petty Bag is directed to execute his duties in person, except in case of sickness, &c., when he may appoint a deputy with consent of the Master of the Rolls.

3. The Clerk of the Petty Bag to hold his office during good behaviour, and in case of vacancy, the same to be filled up by the Master of the Rolls,—such clerk being an *attorney or solicitor of five years' actual practice*.

4. The present Clerk of the Petty Bag is to perform all the duties and be subject to all the regulations of the former Senior and other Clerks, but not to practise by himself or his partner as an attorney in the Petty Bag Office or on the *Common Law side* of the Court of Chancery.

5. The Clerk of the Petty Bag, when the present clerk shall cease to hold the office, shall not act as an attorney or solicitor; and when the salary of the present clerk shall be increased to 800*l.* a year, he is not to practise.

6. The salary of the Clerk to be 600*l.* a year, with power to the Lord Chancellor to increase it to 800*l.*

7. The Clerk of the Petty Bag may appoint such clerks to assist him as the Master of the Rolls may direct; the clerks

to be paid such salary as the Lord Chancellor may order.

8. The salaries and expenses of the office are to be paid out of the Suitors' Fee Fund.

9. Officers taking any gratuity are to be removed from their office.

10. Power is given to the Lord Chancellor and the Master of the Rolls to transfer the business of any other office in Chancery to the Petty Bag Office.

11. A Seal of Office is to be provided, and may be cancelled or altered from time to time.

12. The Clerk of the Petty Bag is authorized to give certificates upon specifications, deeds, &c., enrolled in his office, stamped with the Seal of Office, and which are to be received in evidence in all Courts, without further proof.

13. Office copies of documents sealed with the seal of office are also to be received in evidence without further proof.

14. Rules, orders, writs, records, &c. issued out of the Petty Bag Office are to be sealed with the common law seal.

15. Specifications for letters patent are to be enrolled in the Enrolment Office, and disclaimers and alterations under the Patent Act, 5 & 6 Wm. 4, c. 83, are also to be there enrolled.

16. Provision is then made for enlarging the Enrolment Office.

17. A seal to be approved by the Master of the Rolls is to be provided for the Enrolment Office.

18. Certificates of enrolment are to be given, and when sealed to be admitted in evidence.

19. Office copies of enrolments stamped with the seal of office are likewise to be admitted in evidence.

20. The forging or altering any seal or document is declared to be a felony.

21. Power is given to the Lord Chancellor, &c. to fix a table of fees to be taken in the Petty Bag Office, but no fees are to be taken in respect of duties performed at her Majesty's suit.

22. The Clerk of Petty Bag is to receive and pay over the monies received from the Hanaper, and on the admission of solicitors.

23. The Clerk of Petty Bag to keep accounts of fees received, and pay the same into the Suitors' Fee Fund.

24. Solicitors are entitled to practise as attorneys in the Common Law side of the Court of Chancery.

25. The same costs are to be allowed as in Courts of Common Law.

26. Writs may be tested in Term-time or in vacation.

27. Writs may be made returnable in Term-time or in vacation.

28. Proceedings of the Court may be either in Term-time or in vacation.

29. Writs of *scire facias* may be directed to the sheriff of any county.

30. Declarations are to be delivered, and not filed.

31. Pleadings are to be delivered, and not filed.

32. Issues may be tried in any of the Superior Courts.

33. Record of issue is to be filed in the office of the Petty Bag.

34. Superior Courts of Common Law to have the same powers as in actions pending in their Courts.

35. The Superior Courts are to give the same judgment as in the Court of Queen's Bench.

36. A transcript of the proceedings in Courts of Common Law may be taken into the Courts of Chancery.

37. The costs are to be taxed by the Masters of the Court respectively.

38. Writs and proceedings may be prepared by the parties or their attorneys.

39. The judges may dispose of matters incident to any action on the Common Law side of the Court of Chancery.

40. The Master of the Rolls may make orders for the custody, &c., of the records.

41. General rules and orders may be made by the Lord Chancellor and Master of the Rolls.

42. The privilege of suing by the officers of the Court of Chancery on the Common Law side is abolished.

43. Saving existing actions by or against officers.

44. The parties or their attorneys to cause their names to be entered in a book at the Petty Bag Office, and place of address within three miles of the office.

45. Affidavits may be sworn before Clerk of Petty Bag.

46. Saving the jurisdiction of the Lord Chancellor and Master of the Rolls.

47. Form of writs to be settled and approved by the Lord Chancellor and Master of the Rolls.

48. Courts of Common Law to take cognizance of writs and proceedings brought before them.

49. Monies paid into Court for her Majesty's use shall continue to be received as heretofore, &c.

50. Construction of terms in this act.

51. Short title "The Petty Bag Office and Enrolment in Chancery Amendment Act, 1849."

The following are the clauses *in extenso* which appear particularly to concern the practitioners now entitled to act on the Common Law side of the Court of Chancery, and the alterations effected in regard to the evidence of documents enrolled in the Petty Bag and Enrolment Offices.

Certificates of enrolment.—That the Clerk of the Petty Bag shall, upon request, and payment of the proper fees payable in respect thereof, indorse or write upon every specification which at any time heretofore has been enrolled in the Petty Bag Office, (provided the enrolment shall then be in his custody,) and upon every deed, instrument in writing, and document which at any time heretofore has been or at any time hereafter shall be enrolled in the Petty Bag Office, a certificate stating that such specification, deed, instrument in writing, or document has been or was enrolled in the said Petty Bag Office, and the day of such enrolment, and shall cause such certificate to be sealed or stamped with the said Chancery Common Law Seal; and every such certificate purporting or appearing to be so sealed or stamped shall be admitted and received in evidence as well before either house of parliament as also before any committee thereof, and also by and before all courts, tribunals, judges, justices, and other persons whomsoever, without further proof, and as sufficient *prima facie* evidence that the specification, deed, instrument in writing, or document there-mentioned was duly enrolled in the Petty Bag Office on the day mentioned in such certificate. (s. 12.)

Office copies of documents to be received in evidence.—That every office copy issued from the Petty Bag Office shall be sealed with the said Chancery Common Law Seal for the time being; and every document sealed with such seal, and purporting to be a copy of any record or other document of any description, shall be deemed to be a true copy of such record or other document, and shall, without further proof, be admissible and admitted and received in evidence, as well before either house of parliament as before any committee thereof, and also by and before all courts, tribunals, judges, justices, officers, and other persons whomsoever, in like manner and to the same extent and effect as the original record or other document would or might be admissible or admitted or received if tendered in evidence, as well for the purpose of proving the contents of such record or other document, as also proving such record or other document to be a record or document of or belonging to the said Court of Chancery, but not further or otherwise. (s. 13.)

Specifications to be enrolled.—That every specification or instrument in writing for describing or ascertaining any invention, and to be

enrolled in Chancery in pursuance of letters patent under the great seal, shall be enrolled in the Enrolment Office of the Court of Chancery; and every disclaimer and memorandum of alteration to be enrolled in pursuance of the 5 & 6 Wm. 4, c. 83, intituled "An Act to amend the Law touching Letters Patent for Inventions," shall also be enrolled in the said Enrolment Office; whether the specification of the invention to which such disclaimer or memorandum of alteration shall relate shall or shall not have been enrolled in the said Enrolment Office; and the enrolment of every such disclaimer and memorandum of alteration in the said Enrolment Office shall be and be deemed to be the enrolment thereof in the proper office in pursuance of the provisions of the said act. (s. 15.)

Certificates of enrolment admitted in evidence.—That the Clerk of the said Enrolment Office, or his deputy or assistant, shall, upon request, and payment of the proper fees payable in respect thereof, indorse or write upon every deed, specification, instrument in writing, and document which at any time heretofore has been or at any time hereafter shall be enrolled in the said Enrolment Office, a certificate that such deed, specification, instrument in writing, or document has been or was enrolled in Chancery, and the day on which such enrolment was made, and shall cause such certificate to be sealed or stamped with the said seal of the Chancery Enrolment Office; and every such certificate purporting or appearing to be sealed or stamped shall be admitted and received in evidence by all courts and other tribunals, judges, justices, and others, without further proof, and as sufficient *prima facie* evidence that the deed, specification, document, or instrument in writing therein mentioned was duly enrolled in the Court of Chancery on the day and at the time mentioned in such certificate. (s. 18.)

Copies of enrolments admitted in evidence.—That every document or writing sealed or stamped or purporting or appearing to be sealed or stamped with the said seal of the Chancery Enrolment Office, and purporting to be a copy of any enrolment or other record, or of any other document or writing of any description whatsoever, including any drawings, maps, or plans thereunto annexed or indorsed thereon, shall be deemed to be a true copy of such enrolment, record, document, or writing, and of such drawing, map, or plan (if any) thereunto annexed, and shall, without further proof, be admissible and admitted evidence, as well before either house of parliament as also before any committee thereof, and also by and before all courts, tribunals, judges, justices, officers, and other persons whomsoever, in like manner and to the same extent and effect as the original enrolment, record, document, or writing could or might be admissible or admitted in evidence, as well for the purpose of proving the contents of such enrolment, record, document, or writing, and the drawing, map, or plan (if any) thereunto annexed, as

also proving such enrolment, record, document, or writing to be an enrolment, record, document, or writing of or belonging to the said Court of Chancery, and that such enrolment, record, document, or writing was made, acknowledged, prepared, filed, or entered on the day and at the time when the original enrolment, record, document, or writing shall purport to have been made, acknowledged, prepared, filed, or entered. (s. 19.)

Solicitors to be entitled to practise on Common Law side.—That every person who has heretofore been admitted a solicitor of the said Court of Chancery, and who is now a solicitor of the said Court, shall by virtue of his admission and this act become and be an attorney of the said Court, and every person hereafter to be admitted a solicitor of the said Court shall by virtue of such admission become an attorney of the said Court, and the solicitor of her Majesty, the solicitor of each of the several public boards of this realm, and every person so to become an attorney of the said Court as aforesaid, shall be allowed and entitled to practise as an attorney on the Common Law side of the said Court of Chancery, any law or usage to the contrary notwithstanding, upon payment, nevertheless, of such fees as shall or may be payable in respect of the business transacted by the said attorneys; and all such documents, proceedings, writings, acts, duties, services, matters, and things as before the passing of the said recited act were or ought to be prepared, conducted, done, or performed by the said senior, second, and third clerks of the Petty Bag respectively, as the attorneys of or for their clients respectively, shall or may from and after the passing of this act be prepared, conducted, done, and performed by such clients respectively in their own proper persons, or by some person who shall become or be admitted and actually be an attorney of the said Court by virtue of this act, and not by any other person whomsoever. (s. 24.)

Costs.—That every attorney or party practising on the Common Law side of the Court of Chancery shall be entitled to charge and be paid and allowed such costs, fees, and charges for the transaction of business on the Common Law side of the said Court as is or are allowed to attorneys or parties for business of a similar nature in her Majesty's Superior Courts of Common Law. (s. 25.)

Declarations to be delivered.—That in case any defendant in any action, suit, or proceeding already or hereafter to be commenced shall appear on the Common Law side of the Court of Chancery, in person or by attorney, to answer in such action, suit, or proceeding, it shall not be necessary to file any declaration, but the plaintiff or prosecutor, or his attorney, shall deliver the declaration to such defendant or his attorney, and shall also at the same time, in any action of *scire facias* to repeal letters patent for inventions, deliver to such defendant or his attorney the notice of objections (if any) required by the provisions of

5 & 6 W. 4, c. 83, intituled "An Act to amend the Law touching Letters Patent for Inventions," and it shall not be necessary at any time hereafter to file any notice of objections required by the said last-mentioned act, but only to deliver the same to the defendant or his attorney, as required by this act; and that on the traverse of an inquisition found the traverse shall be filed in the Petty Bag Office, and the traverser or his attorney shall deliver a copy thereof to the opposite party or his attorney. (s. 30.)

Pleadings to be delivered.—That in any such action, suit, or proceeding as aforesaid no demurrer, nor any plea or pleading subsequent to the declaration or traverse, shall be filed in the said Office of the Petty Bag or otherwise in the said Court of Chancery; and that in every such action, suit, or proceeding every such demurrer, plea, and subsequent pleading shall be delivered by the party demurring or pleading, or his attorney, to the opposite party or his attorney, and that the issue in any such action, suit, or proceeding shall be delivered only, and not filed, and shall or may be made up and delivered by either party or his attorney to the opposite party or his attorney. (s. 31.)

Issues may be tried in the Superior Courts.—That in case any issue respecting any matter of fact to be tried by the country has at any time heretofore been or shall at any time hereafter be joined in any action, suit, or proceeding on the Common Law side of the Court of Chancery, then and in every such case the record shall be made up and filed in the Office of the Petty Bag; and it shall and may be lawful to try such issue in fact in any one of the three Courts of Queen's Bench, Common Pleas, or Exchequer of Pleas; and in every such case the writ of *venire facias juratores* for summoning a jury to try such issue shall or may be made returnable and returned in such of the said three Courts as the issue is intended to be tried in; and a transcript of the said Record in Chancery, containing such issue, shall or may thereupon be sent or taken into the Court in which such writ of *venire facias* shall be made returnable, in like manner as records containing issues may now be sent or taken from the Common Law side of the said Court of Chancery into the Court of Queen's Bench, and it shall not be necessary to issue any writ of mittimus or other writ for the sending or taking such transcript into either of the said Courts; and in case such writ of *venire facias* shall be made returnable in either of the said Courts of Common Pleas or Exchequer of Pleas, such Court shall, upon the transcript of the said record being brought into such Court, proceed to try such issue either at Bar or at Nisi Prius, as such Court shall think fit, and in like manner as such issue would or might have been tried in the Court of Queen's Bench in case such writ of *venire facias* had been made returnable in that Court, and the said transcript, or the original record, had been taken or deemed to be taken by the Lord

Chancellor into that Court; and upon any such transcript as aforesaid being taken or brought into either of the said Courts of Common Pleas or Exchequer of Pleas such Court shall or may issue such writs, make such rules, and proceed therein in all respects for the trial or other lawful determination of the issue therein contained, in like manner as the Court of Queen's Bench could or might have done if such transcript or the original record had been taken into the Court of Queen's Bench, and with full power to set aside or vacate any trial, verdict, or other proceeding, in like manner as could or might have been done by the said Court of Queen's Bench. (s. 32.)

Powers of Courts of Common Law.—That the said Courts of Queen's Bench, Common Pleas, and Exchequer, and the judges thereof respectively, shall have the same power and authority in respect of the transcript of any record brought before them as aforesaid, and the pleadings, issues, and matters therein contained, as they have in respect of the record in any action, suit, or proceeding commenced or pending in such Court, and the pleadings, issues, and matters in such record contained: Provided always, that nothing herein contained shall authorize the giving final judgment in any case in which the Court of Queen's Bench has not heretofore had such authority. (s. 34.)

Costs to be taxed.—That in all cases where any party shall be entitled to the costs of any such issues, or of any other proceedings or matters provided for by this act, in any of the said Courts, such costs shall be taxed and regulated by one of the Masters of the said Court respectively, who shall endorse his allocatur on the rule or order, as the case may be, or upon the postea, before the same shall be taken or returned into the Court of Chancery as aforesaid. (s. 37.)

Writs and proceedings to be prepared by parties or their attorneys.—That every writ which shall or may, at any time after this act shall come into operation, lawfully issue out of the said Office of the Petty Bag, under the said Chancery Common Law Seal, and every record and proceeding whatsoever on the Common Law side of the said Court of Chancery, shall be prepared, engrossed, and issued by the party requiring or conducting the same, subject nevertheless to such rules and regulations as shall or may be made and for the time being in force, by virtue of this act or otherwise, for regulating the practice of the Common Law side of the said Court of Chancery, and also subject to the payment of such lawful fees as shall or may be payable for or in respect thereof; and upon payment of such fees, and complying with such rules, such writs, records, and proceedings shall (when necessary, and if lawful and regular,) be duly sealed. (s. 38.)

Parties or attorneys to cause names to be entered in a book.—That every person, party to any action, suit, or proceeding now pending in

the said Court of Chancery on the Common Law side thereof, shall, before taking any fresh step in or about any such action, suit, or proceeding, cause to be entered in a book to be kept in the said Petty Bag Office, if he intends to act in person and not by attorney therein, his own name and address, and if he intends to act by attorney and not in person, then the name and address of his attorney; and if any such person or attorney resides more than three miles from the said office, some place within that distance shall be mentioned and entered in the said book, at or to which pleadings, notices, and other proceedings may be left or sent for such person or his attorney; and every attorney shall, before he acts as the attorney of any person in the said Court, cause to be entered in such book as aforesaid his name and also his address, or some place at or to which pleadings, notices, or other proceedings may be left for or sent to him. (s. 44.)

GRIEVANCES OF THE PROFESSION.

INADEQUATE COSTS.

It appears that very inadequate costs are allowed in Ireland on the taxation of costs, and as the grievances of our brethren there cannot fail to be interesting to our readers here, we shall state the complaint as we find it recorded in *The Press*, a Dublin paper, which is evidently well-disposed towards the profession. The quotations from Mr. Warren's excellent Lectures at the Incorporated Law Society are appropriately introduced. The following is the letter of a solicitor which appeared in that journal on the 10th September—

"Solicitors—Costs of Taxations.

"Through your journal I would call the attention of the Committee of the Law Society to the very inadequate fees which are allowed members of my profession for attending the taxation of costs either in Chancery or at the Equity side of the Exchequer. According to the Chancery schedule of fees, the remuneration (?) for this very troublesome, irksome, and responsible business is settled at the rate of 6s. 2d. for every 100 items, which will at least make 20 pages of costs. In the Equity Exchequer the rate is 6s. 2d. for each 12 pages, containing 28 lines, or for every 100l., at the discretion of the officer. The scale adopted by the Exchequer is not quite so outrageous as that which was settled for Chancery, but both of them are absurd in reference to any fair notion of remuneration for the business to which they apply.

"In cases of taxation between solicitor and client, the utter inadequacy of the fee allowed to the solicitor "opposing" (as it is called) the taxation, becomes a gross and a striking injustice, as I think a very plain view of the

duties to be performed will demonstrate. Let me suppose the bill to be taxed to contain 960 items. For the taxation of such a bill, which will, at least, extend to 80 pages, the solicitor attending on behalf of the client is entitled to the sum of 17. 10s. 10d. What are the duties to be performed, and what is the business to be done for that sum? In the class of cases to which I allude the probability is that the solicitor attending for the client has had no previous knowledge of the proceedings to which the bill of costs relates. He is merely employed to see the bill taxed, and to watch with lynx-eyed jealousy that no improper or excessive charges are allowed. To enable him to discharge that duty he must read and re-read the bill of costs, so as to make himself master of the nature and bearings of the business and proceedings forming the subject of it. Supposing the bill to extend to 80 pages, the performance of that first and imperative duty will occupy at least five hours. Then there must necessarily follow attendances and conferences with the client for explanations on various topics growing out of the costs, and to these may fairly be set down the consumption of, at all events, two additional hours. All this being done, then comes the taxation, and certainly in nine out of ten cases, the actual and real work of the taxation before the officer will occupy at least six hours, to which may be added a margin of four hours for the loss of time in passing backwards and forwards to the taxing office, and for unavoidable delays and stops in the office itself.

"Thus, in the business and for the immediate objects of the taxation itself, there is a consumption of 17 hours, for which the solicitor is entitled to charge 17. 10s. 10d., being at the rate of 1s. 8d. an hour! I have no doubt that if this matter were brought out a little more in detail, and were submitted to the Lord Chancellor and the Chief Baron, the injustice and inadequacy of such a rate of remuneration would be at once corrected. There also exists the paramount consideration that unless proper, nay, ample remuneration, be allowed for this duty, in the performance of which the public are deeply interested; respectable and able practitioners will not be induced to undertake the taxation of costs, a branch of our professional business never agreeable, and always arduous, troublesome, and responsible."

The editor of *The Press* has taken up the subject with considerable zeal, showing that he well understands the bearing of these questions, and he advocates the cause of the practitioners with much ability. He says—

"It calls for no stretch of liberality to concede that under any circumstances 6s. 2d. must be an utterly and absurdly insufficient rate of remuneration for a solicitor's trouble and labour consequent on the taxation of 100 items of a Chancery bill of costs. . . .

"Unquestionably, there is a great inequity

is the public mind to believe in the possibility of an attorney being wronged, or, more properly speaking, to admit that, if wronged, he shall be entitled to the redress which may be successfully claimed by the injured member of any other class of the community. It is vain to inquire into the causes of this unjust prejudice. Its existence is a fact not disputable, however much to be regretted, and against the mischievous operation of which there can be no complete protection until the relations between the profession and society are more generally and correctly understood. These considerations suggest the utility of bringing forward all questions touching the profession in a plain and distinct form, supported by details and statistics such as those relied upon by our correspondent. Had he limited himself to a general complaint that solicitors were badly paid for the trouble and business incident to the taxation of bills of costs, there would not be the slightest attention paid to it. Stated in general terms, no one would believe in the existence of the grievance, but in the form which he has selected, there is no possibility of denying the necessity and reasonableness of the required reform. Whatever may be the popular disinclination to concede to 'costs' the qualities of a *nawar*, still nobody will argue that 1s. 8d. per hour is sufficient payment for a solicitor, by whose vigilance and services, rendered within that period, perhaps 20% are saved to the client.

"The remark made by our correspondent at the close of his letter is not less true than conclusive.

"For such a rate of remuneration no respectable man could be expected to undertake the duties of this branch of professional business. And yet there is no department of it in which the public are more interested. It involves a settlement of accounts, perhaps, of long standing, and to a large amount, between the client and his former solicitor. In such cases the relations between the client and that solicitor are not ordinarily of an amicable nature; for, as Mr. Warren very truly said in one of his lectures, 'At sight of your bill all recollection of your services vanishes;' and surely it is of the last importance that the new solicitor to whom the client may resort under these circumstances, should be a man of such respectability and acquirements as would not find a fitting remuneration in the sum of 1s. 8d. an hour for his services. On this specific ground it concerns the public as much as, and, perhaps, more than, the profession, that the scale of fees for this portion of the duties of a solicitor shall be rendered consonant with fair and ordinary notions of the return to be expected for services in which are combined the elements of manual labour and mental skill. This view of the public being interested in the proper payment of the profession could not be more strongly enforced, and more happily illustrated, than it has been in the following passages, which we quote from Mr. Warren's first lecture before the Law Institute in London:—

"'Their (the attorneys') welfare is, therefore, a matter of national concernment; everything should be done to further their interests; not to discourage persons of talent, fortune, and position in society from entering that body, but, on the contrary, to make it worth a gentleman's while to become an attorney and a solicitor.'"

LAW OF ATTORNEYS.

THE EXAMINATION—REMEDY FOR DEFECTIVE TESTIMONIALS.

As the time approaches for the examination of candidates applying to be admitted on the roll of attorneys, in Michaelmas Term, it may be useful to notice some points connected with the testimonials of service and other requisites preparatory to the examination.

It is stated in Mr. Pulling's "Summary of the Law of Attorneys," (p. 38,) that,

"The proper course where any of these requisites cannot be complied with, is in the first instance to apply to the Court, or a Judge at Chambers, for leave for the candidate to go before the examiners without, when on reasonable excuse for non-compliance, a special order will be made: as where accidents, or the negligence of others have prevented a compliance with the rules, *c. g.*, where the delay incurred by the unexpected absence of the Master, or the questions have been negligently withheld from the clerk, or where the Master has absconded, or improperly refuses to answer the questions, or the original contract of service has been placed on the files of the Court by mistake, or has been lost subsequent to enrolment, or where the time for sending in the answers to the questions expires a day before the termination of the service. Where, without special order, the examiners declare the testimonials insufficient, there is no mode of appeal except to the judges generally, and not to the Court or a single judge."

There are several mistakes in this statement:—

1. The second section of the Examination Rules expressly empowers the examiners, "in case the applicant shall show sufficient cause to the satisfaction of the examiners why the first regulation cannot be fully complied with, to dispense with any part of the 1st regulation that they may think fit and reasonable." There is, therefore, no occasion in the first instance to apply to the court or a judge for leave to go before the examiners. The examiners every term exercise the power given by the

* We are not aware of any instance of articles improperly enrolled.

2nd section of the rules, and receive secondary evidence in lieu of the primary evidence of the attorney, where the candidate shows he has used due diligence to procure the answers of the attorney, and is unable to do so, in consequence of his having absconded, his death, absence abroad, refusal, or neglect.

Such secondary evidence must be the best that can be obtained, viz. that of the partner (if any) of the attorney; or, of another articulated clerk who has been admitted on the roll, or other clerks in the office corroborated, where practicable, by the certificate of attorneys who have frequently transacted business with the deceased or absent attorney, and have seen the clerk in the discharge of his duty. The certificate of executors, where they have any personal knowledge of the service, is also sometimes required.

2. As to the non-production of the original articles of clerkship, the practice is this: an affidavit must be made of diligent search for the articles, and the deponent must be able to state his belief of their loss, and then the usual certificate of the enrolment of the articles by the master's clerk will be received in evidence. There is no occasion to apply to the court or judge. Cases of this kind frequently occur.

3. Where the time for sending in the answers to the questions expires before the termination of the service, the articles of clerkship and answers to the questions up to the time of leaving the papers must be delivered at the Law Society *within the first seven days of Term*. It is constantly the practice to examine candidates before the expiration of their articles, *provided they will expire during the Term*, but not otherwise. Proof of the remaining service is afterwards brought to the Examiners' secretary, and then the certificate of having passed is delivered.

4. The "appeal to the judges generally," and not to the court or a single judge, is made only when the candidate has been examined, his answers deemed insufficient, and consequently he is not passed. The appeal in such case is to three or more of the judges sitting in Serjeants' Inn Hall.^b In case the testimonials of service should be deemed insufficient, it is clearly competent for the candidate to appeal to the court against the examiners' decision; and we think, also, that a judge at chambers has jurisdiction in such cases.

^b Rule Easter Term, 1846.

NOTES ON THE CIRCUIT.

PROSECUTION OF A CO-MEMBER OF A SOCIETY FOR FORGERY.

On the Oxford Circuit at Monmouth, on the 6th August, the following point was raised for a prisoner on an indictment for forgery in altering a cheque for 12s. 6d. (payable to him as a sick member) to 3l. 12s. 6d.

Mr. Huddleston, for the prisoner objected, that those counts in the indictment could not be sustained which charged the intent to defraud Jacob Chatterley and others, or Rees and others, as in both classes of counts "others" should be taken to include the prisoner himself, as he was a member of the society and part owner of the funds, and therefore amounted to a charge that the defendant intended to defraud himself.

Mr. Baron Rolfe held, that "others" must be taken to include all the other members except the prisoner, and, therefore, was sufficient, within the provisions of 7 Geo. 4, c. 64; but said, if necessary he would reserve the point. It was next objected that the counts which charged the intent to be to defraud the treasurer could not be sustained, as the property belonged not to him alone, but to him jointly with the prisoner and the other members of the society. But his lordship held that as the same law that applied to bankers applied to other agents, and the treasurer had a duty to pay only on genuine orders, and this order, if valid, would protect him, he was defrauded by paying it; and therefore the intent was rightly laid to defraud him. On this point his lordship had no doubt, and he was not requested to reserve it. The prisoner was convicted of the forgery, and sentenced to seven years' transportation.

MR. SERJEANT DOWLING.

My professional avocations having required my personal attendance on the Home Circuit for no inconsiderable period, I think the important services rendered by Mr. Serjeant Dowling ought not altogether to pass unnoticed. The *Times*, in the concluding report of the Surrey assizes, only did him an act of justice in bearing honourable testimony to his great merits as a judge.

I would add my feeble attestation to the talent displayed by him on the bench, equalling most of the eminent judges that have sat in the judgment-seat for the last half century.

I feel assured, that while Serjeant Dowling exists, there will be no difficulty in finding, on a vacancy, an able, upright, impartial, patient, and temperate judge. His forbearance and temper were manifested on several trying occasions.

AN ATTORNEY OF 51 YEARS.

RECENT DECISIONS IN THE SUPERIOR COURTS

AND SHORT NOTES OF CASES.

Vice-Chancellor of England.

In re Wallis's Trust. July 30, 1849.

TRUSTEES' RELIEF ACT.—DEATH OF LEGATEE ABROAD.—PAYMENT OUT OF COURT.

Where the affidavits stated that the legatee of certain monies paid into Court under the 10 & 11 Vict. c. 96, had died at Batavia, at a time subsequent to the testator's death, a petition for payment out to his representatives was granted.

THE testator bequeathed a sum of money to his nephew, Hugh Wallis Aldridge, who, as appeared from the affidavits, had left England in the ship *Vigilant*, for Buenos Ayres, in 1809. That vessel was wrecked and the nephew was conveyed by another ship to Batavia, where he was taken ill, sent to the hospital, and died. One of the deponents stated, that he was in the same hospital, and had seen Aldridge die, and attended his funeral. The trustees having paid the trust money into Court under the 10 & 11 Vict. c. 96, s. 1, this petition was presented by the representatives of the nephew under the 2nd section, for payment out to them.

Bethell and Smyth in support of the petition; *Roundell Palmer and Lewis*, contra.

The Vice-Chancellor said, that as the time and place of the legatee's death were distinctly sworn to, and which was stated to be subsequent to the time when the testator died, the prayer of the petition would be granted.

In Ferris's Trust. July 31, 1849.

COSTS OF PETITION FOR PAYMENT OUT OF COURT OF FUND UNDER THE TRUSTEES' RELIEF ACT.

Held, that the general fund paid in under the 10 & 11 Vict. c. 96, is not exempt from payment of the costs of a petition for payment out thereof, although the petitioner has by his conduct compelled the trustees to pay the fund into Court.

THIS was a petition for the payment out of Court of a sum of money paid in under the 10 & 11 Vict. c. 96, to which the petitioner was entitled.

E. Smith, in support of the petition, asked for costs out of the general fund; *Bethell*, contra, contended that as the petitioner had, by refusing to receive from the trustees the sum to which he was entitled, compelled them to pay the fund into the Court, he ought to bear the costs so occasioned.

The Vice-Chancellor, however, held, that the costs of the application must be paid out of the fund.

Vice-Chancellor Knight Bruce.

In re Vale of Neath Brewery Company, ex parte Hollwoy. Aug. 1, 1849.

CONTRIBUTORY WITHOUT QUALIFICATION.—WINDING-UP ACT.

The Master's report, under the 11 & 12 Vict. c. 45, inserting in the list of contributories without qualification, the name of a party who had transferred his shares to a director, being paid in debentures of the company, was referred back for review, although the transferee had purchased as a trustee for the company without authority, —the petitioner having sworn positively he was unaware of such circumstance.

THIS was a motion that the Master's report, inserting the name of Mr. Hollwoy in the list of contributories without qualification, under the 11 & 12 Vict. c. 45, in the above company, might be varied by restricting the liability prior to June, 1843, when he had transferred his shares. It appeared that the transferee was a director, and took the shares as trustee for the company without authority, and that payment was made in debentures of the company.

Bacon and G. L. Russell, in support of the motion, said, that the petitioner had sworn he was altogether unaware that the transferee did not buy the shares on his own behalf. *Russell and T. H. Terrell*, for the official manager, contra, contended that the payment in debentures had substantially disclosed to the petitioner the nature of the transaction, and that as a partner he was affected by constructive notice.

The Vice-Chancellor held, that the payment in debentures was insufficient to induce the Court to discredit the positive statement of the petitioner as to his belief of the nature of the transaction, and that the doctrine of constructive notice did not apply. The report was therefore referred back to the Master for review.

Attorney-General v. Bishop of Ely. Aug. 7, 1849.

CHARITY SCHEME.—EXCESS OF COSTS OVER ESTIMATE.

A petition was granted for raising the excess of the costs of carrying into effect a charity scheme over the estimate, upon the security of the future surplus income of the charity.

THIS was a petition for raising 2,072*l.* on the security of the future surplus income of certain charity estates in the Isle of Ely, that sum being required for carrying out the charity scheme, the expense of which had exceeded the estimate. The scheme included the building of a school-house, a master's residence, almshouses, and a chapel.

Wigram, in support of the petition; *Sayres*, for the Bishop of Ely, the trustees, and schoolmaster.

The Vice-Chancellor granted the petition.

(In Bankruptcy.)

De parte Watson, in re Watkin. July 30, 1849.

FIAT.—CHOICE OF ASSIGNEES.

Where assignees had been appointed under powers of attorney obtained by the bankrupt from the creditors, in a fiat issued by the bankrupt himself, the Court directed a new choice to be made.

A FIAT had issued against the bankrupt, a drafter at Newport, on the 31st May, under proceedings taken by himself and a circular was sent to the creditors enclosing powers of attorneys for proofs and voting in the choice of assignees. This petition was now presented to remove the assignees so appointed, upon the ground that the selection had been substantially made by the bankrupt.

Russell and Glasse, in support of the petition; *Swanston*, contra.

The Vice-Chancellor directed a new choice of assignees, and reserved the costs.

Vice-Chancellor Wigram.

Hunter v. Nockolds. July 30, 1849.

ANNUITY.—ARREARS.—STATUTE OF LIMITATIONS.

Held, that the arrears of an annuity, secured by covenant, can be recovered for any period not exceeding 20 years.

A QUESTION arose in this cause, upon the reference to the Master for an account of the arrears of an annuity, which was charged upon real estate, and was also secured by covenant, whether, since the 3 & 4 W. 4, c. 27, it could be recovered for more than six years.

Feed and Pryor for the annuitant, contended, that as the annuity was secured by covenant it could be recovered for any period not exceeding 20 years.

The Solicitor-General, *Humphrey*, G. E. *Russell*, *Sehomberg* and *Southgate*, contra.

The Vice-Chancellor said, that the annuity being secured by covenant was recoverable for a period of 20 years, citing *Du Vigier v. Lee*, 2 Hare, 326.

Queen's Bench.

Ayrton and another v. Abbott and another. April 27 and July 5, 1849.

MORTUARY.—OBOLATIONS, OFFERINGS, AND OBVENTIONS.

Held, that mortuaries are not within the 7 & 8 Wm. 3, c. 6, which enables justices to enforce payment upon summary proceedings of oblations, offerings, and obventions; and that the words "or customary dues" in the order for payment of a mortuary, did not bring the case within the jurisdiction of the justices.

THIS was a special case in an action of tres-

pass for taking the plaintiffs' goods, brought by the executors of John Watson against the defendants, justices of Lancashire. The plaintiffs had been summoned before the justices under the 7 & 8 W. 3, c. 6, for the non-payment of a mortuary alleged to be due to the tithe owner by reason of their testator's death, and in default of payment the defendants had issued the warrant of distress.

Addison, for the plaintiffs, contended that the 7 & 8 W. 3, c. 6, applied only to the recovery of oblations, offerings, and obventions; and that the proceedings were bad, inasmuch as the information did not negative their interest in the patronage, and because payment was ordered "for other customary payments," without setting them out.

E. James for the defendants.

The Court, after taking time to consider, held that mortuaries were not within the 7 & 8 W. 3, c. 6; and that, although oblations, offerings, and obventions were within the jurisdiction conferred by the statute on the justices, it did not necessarily follow that "other customary dues" were. The doctrine laid down in *Brittain v. Kincaid*, 1 Brod. & B. 482, does not apply to the present case, and there must therefore be judgment for the plaintiff.

Day v. Paspierre. May 22, July 5, 1849.

FOREIGN ATTACHMENT.—CERTIORARI.—SPECIAL BAIL.

The 1 & 2 Vict. c. 110, does not abolish the process of foreign attachments in the city of London, and a rule was therefore discharged, with costs, to rescind a judge's order on the defendant to put in special bail on removing the cause by certiorari into this Court.

A RULE nisi had been obtained in this case, calling on the plaintiff to show cause why a judge's order for good bail in the action should not be rescinded, or why the bail already put in should not be deemed sufficient. The plaintiff had sued the defendant in the Lord Mayor's Court, and had attached a sum of 150*l.* in the hands of a debtor of the defendant, who thereupon removed the cause by certiorari, and applied to discharge the attachment on putting in common bail. An order was however made on the defendant, to put in good bail within four days, or that a procedendo would issue; whereupon this application was made to rescind such order.

Warren showed cause against the rule, and contended that the attachment could only be discharged by the defendant putting in special bail, and that the 1 & 2 Vict. c. 110, did not affect the case.

M. Chambers and *Hawkins*, in support.

The Court held, the 1 & 2 Vict. c. 110, only abolished arrest as the act of the plaintiff, and not the surrender in discharge of bail, which was an act of the defendant, and that the process of foreign attachment in the Court below was not affected by the statute.

Rule discharged with costs.

ANALYTICAL DIGEST OF CASES

REPORTED IN ALL THE COURTS.

Courts of Common Law.

PLEADING.

ABATEMENT.

1. *Affidavit of verification.*—The 4 Anne, c. 16, s. 11, requiring pleas in abatement to be verified by affidavit, is an enactment for the sole benefit of plaintiffs, and may be waived by them.

Therefore, where a defendant delivered a plea in abatement, with a defective affidavit of verification, and the plaintiff traversed the plea and made up the issue, and the defendant struck out the similitur and demurred, and the plaintiff, after an unsuccessful application to set aside the demurrer as frivolous, obtained two several summonses for time to join in demurrer, and before the time expired signed judgment as for want of a plea: *Held*, that the judgment was irregular. *Graham v. Ingleby*, 1 Exch. R. 651.

2. *Materiality of dates.*—A declaration against two executors on a bill of exchange accepted by their testator, stated, in the commencement, that the defendants had been summoned by virtue of a writ issued on the 14th May, 1847. The defendants pleaded in abatement, that the testator heretofore, to wit, on the 13th December, 1846, made his will, and thereby appointed the defendants and B. executors and executrix thereof; and afterwards, to wit, on the 16th December, 1846, died; and the defendants and B. afterwards, to wit, on the 23rd January, 1847, duly proved the will, and took upon themselves the burthen of the execution thereof; and B. then administered diverse goods and chattels which were of the testator at the time of his death, as executrix of his will. The plea being specially demurred to, on the ground that it did not show that B. administered *before the commencement of the suit*: *Held*, that the plea was good, for dates may be assumed to be material on demurrer, when, if truly stated, they would support the plea; and therefore the Court must intend that the administering of the assets was before the commencement of the suit, the date of the writ being stated; and it seems the Court is presumed to have the writ before them on demurrer.

Held, also, that the plea was not double, as the allegation of probate was only indorsement to the averment of administration. *Ryalls v. Bramall*, 1 Exch. R. 724.

Cases cited in the judgment: *Tucker v. Webster*, 10 M. & W. 371; *Nightingale v. Wilcoxon*, 10 B. & C. 202; *Shepherd v. Shepherd*, 3 D. & L. 200.

3. *Assignees.*—Where to an action of assumpsit by the assignee of an insolvent to recover a debt due to the estate, the defendant pleaded a traverse that the plaintiff was assignee, &c., *modo et formâ*, and it appeared on the trial that the two assignees were appointed, but

that the other one had refused to act: *Held*, that the action could not be maintained, that the defence was properly raised on the issue, and that the defendant was not bound to plead the non-joinder in abatement. *Jones v. Smith*, 5 D. & L. 728.

Cases cited in the judgment: *Scott v. Godwin*, 1 B. & P. 67; *Bloxam v. Hubbard*, 5 East, 407, 420; *Soalgrove v. Hunt*, 1 Chitt. R. 71; 2 Stark. 424.

See *Duplicity*, 2.

ACCORD AND SATISFACTION.

Agreement by creditors to accept composition.

—To counts by drawer against acceptor of two bills of exchange for 30*l.* and 41*l.* 1*s.*, the defendant pleaded, as to 13*l.* 3*s.* 2*d.*, parcel of the sum of 30*l.* in the first count, and also, as to the 2nd count, that he, the defendant, was in embarrassed circumstances, and indebted to the plaintiff in respect of the causes of action in the introductory part of the plea mentioned in the sum of 54*l.* 1*s.* 2*d.*, and to one B. in a certain other sum of money, and was unable to pay the plaintiff and B. their debts in full, and thereupon the defendant agreed with the plaintiff and B. to pay them respectively; and the plaintiff and B. then mutually agreed with each other and the defendant to accept of him 10*s.* in the pound as a composition upon and in full satisfaction and discharge of their respective debts. The plea then averred readiness and willingness to pay, with a tender of the amount of the composition, and concluded with payment of it into Court. The plaintiff replied by traversing the agreement to accept the composition of 10*s.* in the pound in satisfaction and discharge; upon which issue was joined. At the trial the agreement proved was to accept a composition of 10*s.* in the pound, payable in *certain sums on certain days*. It also appeared that default had been made in payment of the instalments. The learned judge, at the request of the defendant's counsel, amended the plea accordingly: *Held*, that the plea, as amended, was bad, even after verdict, for not stating that the payments were made at the precise times agreed on, or at least a tender made of them.

Semble, that, if the plea had been that a new mutual agreement between plaintiff, defendant, and other creditors, binding on each at the time when it was made, was given as a substitution for, or in satisfaction of, the debt due from the defendant to the plaintiff, such plea would have been good, and in that case it would have been for the jury to decide whether the plaintiff agreed to accept the agreement itself, not the performance of it, as a satisfaction for his debt.

A judge at Nisi Prius ought not to amend a pleading, if the effect of the amendment would be to render the pleading demurrable. *Evans v. Powis*, 1 Exch. R. 601.

Cases cited in the judgment: *Case v. Barber*,

T. Raym. 450; T. Jones, 158; Good v. Cheesman, 2 B. & Ad. 328.

ARGUMENTATIVENESS.

In assumpsit by vendee against vendor, for not delivering a proper abstract of title, the declaration alleged that the sale was subject to a condition that the vendor should deliver an *abstract of title* to the purchaser; and assigned a breach in the non-delivery of any abstract showing such a good and sufficient title as the plaintiff was, according to the condition, entitled to require to be shown.

Plea, that, at the time of the making of the promise, it was agreed, *as part of the contract*, that the defendant should deliver an abstract of his title, *commencing with a deed of conveyance from A. to B., dated, &c., only*, and should not be required to furnish any other abstract, or go into any previous title, &c.

Held bad, on special demurrer, as an argumentative and circuitous denial of the contract stated in the declaration, and amounting to *non assumpsit* only. *Sharland v. Lefschild*, 4 C. B. 529.

See *Bar, Plea in, 3; Detinue; Duplicity, 1; Replication, 1.*

AUDITA QUERELA.

A defendant is *audita querela*, may plead several matters, by leave of the Court; it being "an action or suit," within the meaning of the 4 & 5 Anne, c. 16, s. 4. *Giles v. Hutt*, 5 D. & L. 387; S. C. 1 Exch. Rep. 701.

Case cited in the judgment: *Nathan v. Giles*, 5 Taunt. 558.

AWARD.

A declaration stated that certain matters in dispute were referred to *J. H. and J. M.*, "and to such third person as should be chosen and agreed upon by the said *J. H. and J. M.*, and appointed by writing under their hands to be endorsed on the agreement of submission before proceeding on the said reference, to arbitrate, &c., jointly with them of and concerning the matters in difference, so as the said arbitrators, or any two of them, should make their award, on or before a certain day, and that the costs of the reference and award, including a reasonable compensation to the said arbitrators for their trouble, should be in the discretion of the said arbitrators." The declaration then averred that *J. H. and J. M.*, before proceeding with the reference, chose and agreed upon, and by writing under their hands nominated and appointed *J. M.* to be the third arbitrator together with them; that the three said arbitrators made their award, and found a certain sum to be due from the defendant to the plaintiff, and further that the plaintiff and defendant should pay a moiety each of the costs of the reference and award, including the compensation to the arbitrators. Breach, non-payment of the sum so found to be due: *Held* bad, on general demurrer, for not showing that a third arbitrator was properly appointed. *Bates v. Townley*, 1 Exch. R. 572.

BAR, PLEA IN.

1. *Statute of Limitations.—Uniformity of*

Process Act.—Notwithstanding the 10th section of the Uniformity of Process Act, 2 W. 4, c. 39, requires a particular mode of issuing and continuing writs, in order to prevent the operation of any Statute of Limitations, a plea of such statute must, in all actions, be in the general form, that the cause of action did not accrue within — years next before the commencement of the suit; and if the plaintiff replies that the cause of action did accrue within the limited time, he must show by a proper record that all the formalities required by the 10th section have been complied with. *Higgs v. Mortimer*, 1 Exch. R. 711.

Cases cited in the judgment: *Beardmore v. Rattembury*, 5 B. & Ald. 452; 2 Saund. 24, n. 3 i.; *Gregory v. Desanges*, 5 Bing. 85; *Pratt v. Hawkins*, 15 M. & W. 599.

2. *Statute of Limitations.*—To a declaration in covenant, which commenced by stating that the defendant was summoned to answer the plaintiff and *R.*, since deceased, by virtue of a writ issued on the 21st March, 1843, the defendant pleaded, in bar of the further maintenance of the action, special pleas of the Statute of Limitations, alleging that the 1st writ with which the defendant was served was a writ of pluries summons, dated 21st October, 1846, and that such writ was not issued within one calendar month next after the expiration of any preceding writ of summons, and that the cause of action did not accrue within 20 years next before the date and issuing of the said pluries writ of summons: *Held* bad on special demurrer; 1st, as an argumentative denial that the cause of action accrued more than 20 years before the commencement of the suit; 2ndly, as not being properly pleaded in bar of the further maintenance of the action. *Higgs v. Mortimer*, 1 Exch. R. 711.

3. *Argumentative denial.*—To a declaration in assumpsit, which stated that plaintiff agreed with defendants to act as their salesman for one year, and not to be connected with any other house in disposing of their goods; and that defendants agreed to pay plaintiff 200*l.* for such servitude. Averment, that plaintiff entered into defendants' employ, and continued therein, and was not connected with any other house, and had always, until the expiration of one year from the said agreement, been ready and willing, and offered to remain in such employ, and not to be connected with any other house. Breach, that defendants would not suffer plaintiff to act as salesman for the remainder of the year, but discharged plaintiff, and had not paid the 200*l.* The defendants pleaded as to the nonpayment of the 200*l.*, that after plaintiff ceased to be in defendants' employ, and during the year, plaintiff entered into the service of the house of certain other persons, and became connected with it in disposing of their goods: verification: *Held* bad, on special demurrer, as an argumentative denial of the plaintiff's readiness and willingness to remain in the defendants' employ. *Spotswood v. Barrow*, 1 Exch. R. 804.

4. *Nonjoinder of co-assignee.*—In actions of

contract by the assignees of a bankrupt or insolvent, the proper mode of taking advantage of the nonjoinder of another assignee is by a traverse, that the plaintiffs are assignees *modo et forma*, and not by plea in abatement. *Jones v. Smith*, 1 Exch. R. 831.

Cases cited in the judgment: *Can v. Read*, 3 Ark. 695; *Scott v. Godwin*, 10 A. & E. 149; *Rice v. Shuts*, 5 Barr. 2613; *Naliborp v. Dorington*, 2 Lev. 113; *Blaxam v. Hubbard*, 5 East, 407; *Snelgrove v. Hunt*, 2 Stark. 484.

BILL OF EXCHANGE.

To an action by indorsee against acceptor of a bill of exchange, the defendant pleaded, that before the bill became due, the plaintiff indorsed the same to a person unknown, who held the same by virtue of such indorsement, thence until and at the time when the same became due, and has ever since remained and still is such indorsee, to whom as such indorsee the defendant has ever since been and still is liable to pay the amount. Replication, that the plaintiff, at the time of the commencement of the suit, was the indorsee and holder of the bill, without this, that the person in the plea mentioned was, at the time of the commencement of the suit, holder of the bill in manner and form as in the plea alleged: *Held*, on special demurrer, that the replication was good. *Arthur v. Beales*, 1 Exch. R. 608.

BOND, POST OBIT.

Replication to plea of Statute of Limitations.—To debt on bond bearing date on a day more than 20 years before the commencement of the action, the defendant pleaded, that the debt and cause of action in the declaration mentioned, did not accrue at any time within 20 years next before the commencement of the suit. Replication, that the debt and cause of action *did* so accrue. At the trial, the bond was produced, and appeared to be a *post obit* bond; and it was proved that the party upon whose death the sum secured was made payable, died within 20 years: *Held*, that the plaintiff was entitled to the verdict.

Semble, that the replication would have been bad on special demurrer. *Tuckey v. Hawkins*, 4 C. B. 655.

DECLARATION.

1. *Railway*.—A declaration in assumpsit alleged, that the plaintiff had agreed, with divers other persons, to endeavour to establish a company for making a railway, the capital of which was to be divided into shares, upon which a deposit of 2l. 2s. for each share was to be paid by the allottees; that the plaintiffs were the committee of management of the company, and that they, at the request of the defendant, allotted to him certain shares, upon certain terms then agreed upon by and between the plaintiffs and the defendant, to wit, that a deposit upon each of such shares should be paid by him to the account of the company, to one of certain bankers then appointed in that behalf, of all which premises the defendant had notice; and thereupon, in consideration of the premises, and

that the plaintiffs, at the request of the defendant, then promised the defendant to perform the said terms on their part; the defendant then promised the plaintiffs to perform the said terms on his part. That the plaintiffs were always ready and willing to perform the said terms on their part. Yet the defendant hath not paid to any of the said bankers the said deposit, or any part thereof: *Held*, that the declaration was not bad, for omitting to show that the provisions of the 7 & 8 Vict. c. 110, with reference to joint-stock companies, had been complied with, or that the company had been formed before the passing of that act.

Held, also, that the declaration disclosed a sufficient contract between the plaintiffs and the defendant, upon which the plaintiffs might sue without joining all the company; and that there was a sufficient consideration moving from the plaintiffs to the defendant to support such a promise.

Held, also, that the declaration set out the terms to be performed by the plaintiffs with sufficient certainty.

Held, also, that it was not necessary to state that the company was continuing at the time of the allotment made, or to allege specifically that the defendant had accepted the allotment. *Duke v. Forbes*, 5 D. & L. 198.

Cases cited in the judgment: *Crype v. Baynton*, 3 Bult. 31; *Ring v. Korbrough*, 2 C. & J. 418.

2. *Arrest without cause*.—The declaration in an action on the case alleged, that the plaintiff being indebted to L. in 36l., he, by the defendant, as his attorney, sued the plaintiff; and that after declaration, the plaintiff petitioned the Court of Bankruptcy, under 7 & 8 Vict. c. 96, and obtained a protection from process, of which the defendant had notice. Yet the defendant, well knowing the premises, but wilfully and maliciously intending, &c., procured judgment to be signed against the plaintiff, and sued out a *ca. sa.*, under which the sheriff arrested the plaintiff: *Held*, that the declaration was not sufficient, and that it ought to have alleged that the arrest was without reasonable or probable cause. *Roret v. Lewis*, 5 D. & L. 371.

3. *Joint-stock company*.—The declaration alleged that the defendants were a joint-stock company, having obtained a certificate of complete registration; that P. & L. then being two of the directors of the company, under their promissory note, and thereby promised, on behalf of the company, to pay the plaintiff or order 32l. 4s. 9d., the balance of account due to him from the company, three months after date, which note was signed by the said P. & L., and made by them and in their names, and on behalf of the said company, and countersigned by the secretary of the company; and thereupon the defendants, in consideration of the premises, promised the plaintiff to pay him the said note: *Held*, that the declaration was insufficient, and did not show any authority in P. & L. to bind the company. *Thompson v. Universal Salvage Company*, 5 D. & L. 380.

4. *Several counts*.—In an action of assumpsit, the 1st count stated, that in consideration of the plaintiff having, at the defendant's request, contracted to sell to H. certain shares, of which defendant was registered holder, defendant promised to deliver to plaintiff all new shares allotted in respect of the shares so sold, as long as defendant continued to be registered holder, and to indemnify plaintiff from all loss sustained by reason of any breach of the former promise. Breach, that certain shares were allotted to defendant, which he would not deliver, and that by reason thereof plaintiff was obliged to lay out a large sum of money in the purchase of other similar shares, in order to fulfil his own contract: *Held*, that such a count might be joined to a count for money paid, and was not an apparent violation of the Reg. Gen., Hil. T., 4 Wm. 4, Pt. ii., r. 5. *Simpson v. Rand*, 5 D. & L. 389.

See *Joint-stock Company ; Several Counts*.

DEMURRER.

1. *To part of replication*.—1. *Quere*, as to the right of a defendant to demur to part of an entire replication, and to join issue upon the residue? *Francis v. Dodsworth*, 4 C. B. 202.

2. *Special*.—The addition of causes of demurrer after the signature of counsel, does not make a demurrer special. *Clarke v. Allatt*, 4 C. B. 335.

3. *Frivolous*.—In an action by executor upon a bond given to his testator, a demurrer to a replication traversing a payment alleged in the plea to have been made to a party stated to have been a co-executor with the plaintiff, but not shown to be alive,—on the ground that the plaintiff had omitted to describe himself as surviving executor, is a frivolous demurrer. *Tuckey v. Hawkins*, 4 C. B. 655.

4. To a declaration upon a guarantee, the defendant, who was under terms to plead issuably, demurred generally, on the ground that it disclosed no consideration for the promise stated.

A judge at chambers having set aside the demurrer as frivolous, the Court rescinded his order,—holding, that the construction of the guarantee was open to argument, and that the demurrer was therefore not frivolous, within the rule. *White v. Woodward*, 4 C. B. 752.

5. *Statement of promise not legally arising*.—*Omission of request*.—A declaration in assumpsit stated, that, in consideration that the plaintiff had become tenant to the defendant of a farm, upon the terms that if the plaintiff should receive from the defendant notice to quit, and should have made expensive improvements upon the farm, for which the subsequent crops should not have compensated the plaintiff, the farm should, on the determination of the tenancy, be looked over by two persons, one to be appointed by each party, and that the persons so appointed should determine to what compensation the plaintiff should be entitled; and that the defendant promised the plaintiff, that if the tenancy should be determined, and the plaintiff should have made improvements,

for which he should not have been compensated, the defendant would, at the plaintiff's request, appoint a person for such purposes. Averment, that the tenancy was determined by the defendant; that the plaintiff had made improvements for which he had not been compensated; that the plaintiff, after the determination of the tenancy, appointed J. D. to determine the compensation, and J. D. was ready to act, of which the defendant had notice, and was then requested by the plaintiff to appoint some person on his behalf: *Held*, on special demurrer, that the declaration was bad, as stating a promise which did not legally arise from an executed consideration; and also on the ground that there was no allegation that the plaintiff had requested the defendant to appoint a valuer before the commencement of the suit. *Lattimore v. Garrard*, 1 Exch. R. 809.

6. *Frivolous*.—The Court refused to set aside as frivolous a demurrer to a declaration, on the ground that the defendant was described by the initial of his Christian name. *Nash v. Collier*, 5 D. & L. 341.

See *Plea*, 1.

DETINUE.

Detinue of a bill of exchange drawn by the plaintiff. Plea, that after the plaintiff drew the bill he indorsed and delivered the same to P., who from thence until the indorsement to defendant appeared to be the owner thereof, and entitled to negotiate the same: that P. afterwards indorsed and delivered the bill to the defendant for good and valuable consideration: that the defendant took the bill from P., without notice that he was not the true owner thereof; whereupon the defendant hath continually detained the same: *Held* bad, as an argumentative denial of the plaintiff's property in the bill. *Austin v. Kelle*, 1 Exch. R. 586.

DILATORY PLEA.

The provision in the 4 Anne, c. 16, s. 11, "that no dilatory plea shall be received," unless verified by affidavit, is introduced for the sole benefit of plaintiffs; and a plaintiff may therefore waive, if he so chooses, an irregularity in, or the omission of, any such affidavit. *Graham v. Ingleby*, 5 D. & L. 737.

DUPLICITY.

1. *Argumentativeness*.—To a count on a bill of exchange, the defendant pleaded, that, after the bill became due, he made a promissory note payable to the plaintiff's order on demand, and delivered the same to the plaintiff, who took and received the same, "for and on account of" the bill, and the causes of action in respect thereof; and that afterwards he delivered to the plaintiff a warrant of attorney, and that the plaintiff accepted and received the same, in full satisfaction and discharge of the said note, and of all causes of action in respect thereof, and of the causes of action in the count mentioned: *Held*, that the plea was not double.

Quere, whether it was bad, as being an argumentative plea of payment. *Fearn v. Cockrane*, 4 C. B., 274.

Case cited in the judgment : *Price v. Price*, 16 Law J., N. S., Exch. 99.

2. *Abatement*.—Though the 27 Eliz. c. 5, and 4 Anne, c. 16, do not apply to pleas in abatement, yet, at Common Law, duplicity in such pleas could only be taken advantage of on special demurrer. *Ryalts v. Bramall*, 1 Exch. R. 734.

See *Multifariousness*.

INSOLVENT.

1. *Replication of discharge*.—To debt for 64*l.* 1*s.* 4*d.*, for work and labour, interest, and on an account stated, the defendant pleaded, — 1st, except as to 10*l.*, never indebted; 2ndly, a set-off of “a sum equal in the amount of all the debts in the declaration mentioned,” &c., except as aforesaid, for work and labour as a surgeon and apothecary, &c.; 3rdly, as to 10*l.* payment into Court.

The plaintiff joined issue on the 1st plea, took the 10*l.* out of court, and replied to the 2nd, as to 30*l.* 12*s.* 6*d.*, parcel, &c., that on &c., he the plaintiff, then being an insolvent debtor, in actual custody, &c., was duly discharged according to the 1 & 2 Vict. c. 110, of and from the said sum of 30*l.* 12*s.* 6*d.*, and that the said order and discharge still remained in full force,” and that this the plaintiff was ready to verify;” and that he the plaintiff never was indebted in the residue of the money alleged in the 2nd plea to be due from him to the plaintiff, concluding to the country: *Held*, that the replication was bad on special demurrer, for not setting out the several matters necessary to show that the plaintiff was entitled to his discharge under the statute, or that he had duly complied with its requisitions. Whether the double conclusion was good, or whether the whole ought to have concluded to the Court, *quære*? *Francis v. Dodsworth*, 4 C. B. 202.

Cases cited in the judgment : *Chapple v. Darton*, 1 C. and J. 1; *Ford v. Dornford*, 15 Law J., N. S., Q. B. 172.

2. *Replication of discharge*.—Although a discharge under the Insolvent Debtors’ Act, 1 & 2 Vict. c. 110, does not operate as a complete extinguishment of a debt scheduled, the creditor is not entitled to plead such debt by way of set-off to an action brought against him by the insolvent for a demand accruing subsequently to his discharge. *Francis v. Dodsworth*, 4 C. B. 202.

3. *Plea of discharge*.—In pleading a discharge under the 5 & 6 Vict. c. 116, the proceedings in conformity with s. 4, or the order for protection and distribution, under s. 10, should be set out. *Wright v. Hutchinson*, 4 C. B. 569.

JOINT-STOCK COMPANY.

In an action against a joint-stock company upon a promissory note, the declaration stated, that the company was completely registered; that one S. P. and one C. L., then being two of the directors of the company, made their promissory note, and thereby promised, on be-

half of the company, to pay to the plaintiff, on his order, 32*l.* 4*s.* 9*d.*, the balance of the plaintiff’s account due from the company, which note was then signed by S. P. and C. L., and was then made by them, and in their names; and on behalf of the company, and then was and is expressed by them to be made on behalf of the company, and was then countersigned by the secretary of the company; and thereupon the company, in consideration of the premises, then promised the plaintiff to pay him the amount of the note according to the tenor and effect thereof: *Held* bad, on general demurrer. *Thompson v. Universal Salvage Company*, 1 Exch. R. 694.

See *Declaration*, 3.

MATERIALITY OF ISSUE.

To an action by indorsee of a bill of exchange against the drawer, the defendant pleaded, that the bill was indorsed by T. K. to plaintiffs, who, upon its becoming due, paid the amount thereof to plaintiffs, who received it in full satisfaction and discharge of the sum in the bill specified, and then delivered the bill to T. K., who had been ever since and was the holder at the commencement of the suit, and that, by virtue of the premises, defendant was liable to T. K. Replication, that plaintiffs were the holders of the bill at the commencement of the suit, without this, that T. K. was the holder, *modo et forma*: *Held*, on motion for a repleader, that the issue raised by the replication was material. *Rogers v. Chilton*, 1 Exch. R. 862.

MULTIFARIOUSNESS.

Duplicity and ambiguity.—To a count by drawer against acceptor of a bill of exchange, the latter pleaded that he accepted the bill as blank whilst he was an infant, that the plaintiff afterwards altered it by dating it of a day subsequent to the defendant’s attaining his majority, and that the defendant never ratified or assented to such alteration after he became of age: *Held*, (on special demurrer,) that the plea was not multifarious, double, or ambiguous. *Harrison v. Cotgrave*, 4 C. B. 562.

NEW ASSIGNMENT.

Departure.—In trespass against B. and C. for seizing and converting the goods of A., B. alone justified the seizure and impounding of the goods as a distress for rent, within 30 days after they had been wrongfully removed from the demised premises. A. new-assigned, that he brought his action, not for the trespasses in the plea mentioned, but for that B., after the seizure, and after payment and acceptance of the rent and expenses, and after he ought to have restored to A. the goods so distrained, retained possession thereof, and sold and disposed of them: *Semble*, that this was no departure. *West v. Nibbs*, 4 C. B. 172.

LIMITATIONS, STATUTE OR.

See *Bar*, *Plea in*, 1, 2; *Bond*, *Past Obli*, *Plea*, 2.

NON-JOINDER.

1. *Co-contractor*.—A plea in abatement of

the non-joinder of co-contractors resident within the jurisdiction of the Court, alleging that the contract was made with the defendant and such resident co-contractors, and also with other co-contractors resident without the jurisdiction of the Court, is bad; the statute 3 & 4 W. 4, c. 42, s. 8, requiring the defendant to state in his plea that *all* are resident within the jurisdiction, and to verify the residence of *all* by affidavit. *Joll v. Lord Curzon*, 4 C. B. 249.

2. If A. covenant with B. and C., their executors, administrators, and assigns, although C. do not execute the deed or assent to the covenant, and afterwards disclaim it by deed, to which A. is no party, B. cannot alone (living C.) sue A. upon the covenant. *Wetherell v. Langston*, 1 Exch. R. 634.

Case cited in the judgment: *Petrie v. Bury*, 3 B. & C. 353.

See *Bar*, *Plea* in, 4.

PLEA.

1. *No consideration*.—*Replication de injuriâ*.—*Frivolous demurrer*.—To assumpsit by indorse against acceptor of a bill, defendant pleaded—That the bill was accepted for the drawer's accommodation; that, although at the time of action brought, plaintiff held the bill as the owner thereof, yet he did not hold it for any value; and that, except as in this plea aforesaid, there never was any value, consideration, purpose, or reason for defendant's accepting the bill, or paying or agreeing to pay the amount to the drawer. Plaintiff replied *de injuriâ*; to which replication the defendant specially demurred. A judge at chambers ordered the demurrer to be set aside as frivolous. The Court, on motion to rescind the order, refused to interfere.

Semble, that the replication was good. *Laforest v. Wall*, 9 Q. B. 599.

2. *Debt on specialty*.—*Statute of Limitations*.—To a declaration in covenant for non-payment of money, defendant pleaded that the cause of action did not accrue within 20 years. Replication, that it did accrue within, &c.

Held, under stat. 3 & 4 W. 4, c. 42, ss. 3, 5, that plaintiff could not, in support of this issue, give evidence of an acknowledgment by letter within the 20 years. *Kempe v. Gibbon*, 9 Q. B. 609.

3. *Attachment in Lord Mayor's Court*.—A plea, alleging that the plaint was levied in the Lord Mayor's Court before the commencement of the suit here, but not averring that the *sci. fa. quare executionem non* issued against C. had issued before the commencement of the suit here—is sufficient.

In such a case, the plea—following the allegation of the custom, which was not traversed,—stated, that at a certain Court, it was commanded to the serjeant at mace, that he, according to the custom, should warn the defendant, without setting forth any precept: *Held*, sufficient. *Webb v. Hurrell*, 4 C. B. 287.

Cases cited in the judgment: *Brook v. Smith*, 1 Salk. 380; *Savage's case*, 1 Salk. 291.

4. *Contract void*.—*Non-delivery of coal*

ticket.—In debt for goods sold and delivered, the defendant pleaded, that the goods were divers quantities of coals by the defendant purchased of the plaintiffs, and by the plaintiffs sold and delivered to the defendant; that the said quantities of coal were respectively delivered by the plaintiffs to the defendant after the passing of the 1 & 2 Vict. c. ci.; that each of the quantities of coal so sold and delivered, at the respective times of the sales and of the deliveries thereof, exceeded in weight 560lbs., and that each of the quantities of coal were so delivered, within the city of London, in two carts and two waggons; that the plaintiffs were the sellers of the said quantities of coal; and that the plaintiffs, so being the sellers, did not deliver or cause to be delivered to the defendant, or to his agent or servant, immediately on the arrival of the carts and waggons, and before any of such quantities of coal were unloaded, a ticket with each of the said quantities of coals, nor with any of them, according to the required form, signed by the plaintiffs, with their names in words at full length, according to the statute; and that the defendant, at the times of the said sales and deliveries of the coals, was not a seller of, or dealer in, coals, nor did he purchase the same, or any part thereof, at the coal market:

Held, that the plea sufficiently alleged an omission to deliver a ticket, in contravention of the statute:

That it properly alleged the want of signature by the sellers:

And that the fact of the defendant being a dealer in coals at the respective times of the sales and deliveries, or of his having purchased the coals at the coal market,—by which the necessity of delivering a ticket would have been dispensed with, was sufficiently negatived. *Cundell v. Dawson*, 4 C. B. 376.

5. *Action for use and occupation*. Plea, that plaintiff wrongfully seized and detained certain goods of defendant of sufficient value to pay the rent and costs; that it was agreed that plaintiff should retain them in satisfaction of the rent; and that he did retain them. Replication, traversing the seizure of sufficient value, &c. Replication held bad, as traversing mere inducement to the allegation of acceptance in satisfaction. Plea held good, as disclosing a good accord and satisfaction. *Jones v. Sawkins*, 5 D. & L. 353.

6. Where a plea in abatement was supported by an affidavit of verification, which disclosed the place of business, but not the place of residence, of an alleged co-contractor with the defendant; the Court set it aside, on the ground that it did not comply with the provisions of the 3 & 4 W. 4, c. 42, s. 8.

Whether the affidavit does, or does not, state the true place of residence, is a matter which may be controverted and determined by the Court on motion. *Maybury v. Mudie*, 5 D. & L. 360.

Cases cited in the judgment: *Wheatley v. Golsey*, 9 Dowl. 1019; *Lambe v. Smythe*, 15 M. & W. 453; *Newton v. Stewart*, 4 D. & L. 89.

7. The declaration stated an agreement by plaintiff to act as defendants' salesman for one year; to devote the whole of his time to them, and not to be connected with any other house in disposing of goods; for which defendants were to pay plaintiff 200*l.* for the year. It then averred that plaintiff did enter into defendants' service for part of the year, and was always during the year ready and willing to remain in such employ, and not to be connected with any other house. Breach, that defendants would not suffer plaintiff to act as their salesman for the remainder of the said year, to pay him the 200*l.* Plea, as to the not paying the 200*l.*, that during the year the plaintiff entered the service of another house, and became connected with such house in the disposal of their goods: verification.

Held bad, on special demurrer, as traversing argumentatively the plaintiff's readiness and willingness to remain in the employment of the defendants. *Spotswood v. Barrow*, 5 D. & L. 373.

8. *Frivolous*.—To an action of assumpsit, containing one count on a bill of exchange, and another on an account stated, the defendant pleaded generally *non assumpsit*: *Held*, that the plaintiff was not bound to demur, but might apply to a judge to set the plea aside. *Robeson v. Ellis*, 5 D. & L. 403.

9. Debt on a bond given by a surety under the 1 & 2 Vict. c. 110, s. 8. Plea, that after making the bond, the plaintiff brought an action against the principal, and took and detained him in execution, according to the practice of the Court of Queen's Bench, in respect of the said debt; that, from the time of recovering such judgment until the arrest, he, the principal, was always ready and willing to render himself, according to the course and practice of the Court of Queen's Bench; and that by reason of his detention in execution, he was, by the practice of the said Court, exonerated and discharged from rendering himself according to the said condition: *Held*, on special demurrer, that the plea was bad, as it did not distinctly allege, either that the principal did surrender according to the condition of the bond, or that such surrender was made impossible by the act of the plaintiff. *Hayward v. Bennett*, 5 D. & L. 480.

10. Case for so negligently keeping a mischievous dog, knowing his mischievous propensities, that he worried the plaintiff's sheep. Plea, not guilty: *Held*, that this plea put in issue the *scienter*. *Card v. Case*, 5 D. & L. 509.

Cases cited in the judgment: *May v. Burdett*, 9 Q. B. 101; *Wright v. Lanson*, 2 M. & W. 739; 6 Dowl. 146; *Jackson v. Smithson*, 15 M. & W. 563; 4 D. & L. 45.

11. A declaration in covenant alleged the covenant to be by a company, to pay a certain sum to the plaintiff as soon as conveniently could be done, out of the money raised by the first calls upon the shareholders of the company. Breach, that the money was not paid as soon as conveniently could have been, done

out of the first calls: *Held*, a good breach, the objection being taken to the declaration after pleading over. The company, who were the defendants, pleaded, 3rdly, that the deed of settlement, but which was not the deed declared on, was obtained by fraud; 4thly, that the registration and incorporation of the company, recited in the deed, were obtained by fraud; 8thly, that sufficient money had not been raised to pay the plaintiff, after providing for the expenses of the company, according to the terms of the deed of settlement; 21stly, that the company was not incorporated by any charter or act of parliament, nor duly registered according to the 7 & 8 Vict. c. 110; 22ndly, that at the time of obtaining a certificate of complete registration, the company was not formed by any deed under the hands and seals of the shareholders, under the 7 & 8 Vict. c. 110: *Held*, that all the pleas were bad. *Pilbrow v. Pilbrow's Atmospheric Railway Company*, 5 D. & L. 530.

Case cited in the judgment: *Otway v. Holdips*, 2 Mod. 266.

12. To a declaration in assumpsit against the defendant, as maker of a promissory note, the defendant pleaded, that after the making of the note, and after it became due, it was agreed between the plaintiff, the defendant, and one *A. B.* that the said *A. B.*, should, at the request of the plaintiff, pay to the plaintiff in trust for *E. B.*, the sum of 200*l.* for her sole use, or the sum of 25*l.* per annum, so long as the sum of 200*l.* should remain unpaid, to be paid quarterly; and that the rights and causes of action of the plaintiff, upon and in respect of the said note, should be suspended, so long as he, the said *A. B.*, should continue to pay the said sum of 6*l.* 5*s.* every quarter. Averment, that *A. B.*, had duly paid the annual sum of 25*l.* quarterly. Replication, traversing the allegation of payments alleged to have been made by the said *A. B.*, of the annual sum of 25*l.* After verdict for the defendant, on this issue, and judgment of the Court of Queen's Bench in his favour: *Held*, on error in the Exchequer Chamber, reversing the judgment of the Court of Queen's Bench, that the plea was bad; as the agreement, although it might properly be the subject of a cross action, was yet no bar to the present action. *Ford v. Beech*, 5 D. & L. 610.

Cases cited in the judgment: *North v. Butts*, 2 Dyer, 139, b, 140, a; *Cheetham v. Ward*, 1 B. & P., 630; *Parkhurst v. Smith*, Willes, 327; *Hutton v. Eyre*, 1 Marsh. 603; *Solly v. Forbes*, 2 B. & B. 38; *Woodward v. Lord Darcy*, Plowd. 184; *Nedham's Case*, 8 Rep. 135; *Dorchester v. Webb*, Cro. Car. 373; *Wankford v. Wankford*, 1 Salk. 299; *Freakey v. Fox*, 9 B. & C. 130; 4 M. & R. 18; *Thimbleby v. Barron*, 3 M. & W., 210; *Smith v. Mapleback*, 1 T. R. 441; *Deux v. Jefferies*, Cro. Eliz. 352; *Ayloffe v. Scrimpshire*, Carth. 63; 1 Show. 46; *Stacey v. Bank of England*, 6 Bing. 754.

13. *Issuable*.—The defendant obtained a rule to plead, amongst other pleas, 4thly, "as to

100*l.* parcel, &c., that, before the commencement of the action, the defendant indorsed and delivered to the plaintiffs a bill of exchange for 100*l.*, which the plaintiffs received in satisfaction of the said sum of 100*l.*" The plea delivered as the 4th plea was, as to 100*l.* parcel, &c., that the defendant "for and on account of" the said sum of 100*l.*; indorsed to plaintiffs a bill of exchange, &c., for 100*l.*, drawn by defendant upon and accepted by one T. J., and that the plaintiffs took and received the said bill of exchange "for and on account of" the said sum, parcel, &c., and that the defendant had no due notice of the non-payment of the said bill of exchange : *Held*, that the plaintiffs were entitled to sign judgment as for want of a plea. *Hills v. Hayman*, 5 D. & L. 742.

14. Duplicity in a plea in abatement can only be taken advantage of on special demurrer. *Ryalls v. Bramall*, 5 D. & L. 753.

15. Assumpsit against the defendants as executors of J. B. Plea in abatement of the non-rejoinder of a co-executrix. The plea stated that the defendants and C. B. were appointed executors and executrix; that the defendants and C. B. duly proved the will, and took upon themselves the burthen of the execution thereof, and that C. B. then administered divers goods and chattels which were of J. B., at the time of his death, as executrix of the last will and testament of the said J. B. : *Held*, on demurrer, that the allegation of probate was only inducement to the averment of administration, and did not render the plea double. *Ryalls v. Bramall*, 5 D. & L. 753.

16. The Court is presumed to have the writ of summons before them, on demurrer. *Ryalls v. Bramall*, 5 D. & L. 753.

Case cited in the judgment : *Shepherd v. Shepherd*, 3 D. & L., 200.

17. A date may be assumed to be material upon demurrer, when, if truly stated, it would support the pleading. *Ryalls v. Bramall*, 5 D. & L. 753.

Case cited in the judgment : *Nightingale v. Wilcoxon*, 10 B. & C. 202.

18. Although the statute 2 Wm. 4, c. 39, s. 10, requires a particular mode of issuing and continuing writs, in order to prevent the operation of any Statute of Limitations, the defendant should still plead generally that the cause of action did not accrue within — years before the commencement of the suit; and if the plaintiff replies that the cause of action did accrue within the limited time, he must show, by a proper record, that all the formalities required by the 10th section have been complied with. *Higgs v. Mortimer*, 5 D. & L. 756.

19. To a declaration in covenant, stating that the defendant was summoned to answer the plaintiff by virtue of a writ of summons, dated the 21st of March, 1843, the defendant pleaded, 1st, in bar of the further maintenance of the action, that the first writ with which he had been served was a writ of pluries summons, dated the 21st of October, 1846, and that the

said writ was not issued within one calendar month after the expiration of any preceding writ, and no proceedings had been had towards outlawry. That the cause of action did not accrue within 20 years next before the date of such writ, and that the writ was issued more than 10 years after the passing of the 3 & 4 Wm. 4, c. 42. 2ndly, a similar plea, setting out the various writs in continuation of previous writs, and stating that one of them, dated the 28th of March, 1846, was not entered of record within one calendar month next after the expiration thereof, including the day of such expiration, according to the form of the statute, &c. : *Held*, on special demurrer, that the pleas were bad, 1st, for not alleging positively that the cause of action accrued more than 20 years before the commencement of the suit; and, 2ndly, for being improperly pleaded to the further maintenance of the action. *Higgs v. Mortimer*, 5 D. & L., 756.

20. To an action of assumpsit for money had and received, the defendant pleaded that the money claimed in the declaration had been paid to him and others by the plaintiff, as a deposit on shares allotted to him for the formation of a partnership, to carry on a railway scheme; that the ground of the plaintiff's action was that the scheme had not been prosecuted within a reasonable time; that after the passing of the 9 & 10 Vict. c. 28, it was, at a meeting held under that act, resolved that the undertaking should be abandoned, and the affairs of the partnership wound up; that they had not yet been wound up, nor had a reasonable time elapsed for that purpose : *Held* bad, as amounting to non-assumpsit. *Owen v. Challis*, 5 D. & L., 802.

Cases cited in the judgment : *Solly v. Neish*, 2 C., M. & R. 355; *Clark v. Dignam*, 3 M. & W. 478.

PROMISSORY NOTE.

In an action of debt the declaration stated that defendant made his promissory note, &c., "and thereby promised to pay to the plaintiff, Jessie, by name and addition of Miss Jessie Hope, at 10, Duncan-street, Edinburgh, the sum of £200," &c. It was then averred that the said Jessie, while she was sole and unmarried, was always ready, and the plaintiffs since their marriage were always ready, to receive the amount of the said note, according to the tenor and effect of the said note, &c. : *Held*, that the note, as pleaded, must be taken on general demurrer, to be payable "at 10, Duncan-street, Edinburgh," and that those words were not part of the description of the female plaintiff; and that, therefore, the declaration ought to have averred specifically a presentment at that particular place, and that such an averment was not implied in the averment of readiness to receive according to the tenor and effect of the note : *Held* also, that the note being non-negotiable made no difference. *Spindler v. Grellett*, 5 D. & L. 191.

[To be concluded in our next number.]

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SATURDAY, OCTOBER 20, 1849.

OPERATION OF THE BANKRUPT LAW CONSOLIDATION ACT.

WARRANTS OF ATTORNEY, COGNOVITS, AND JUDGES' ORDERS.

THE Act 12 & 13 Vict. c. 106, came into operation on the 12th instant, and we presume that no apology will be deemed necessary for resuming the consideration of those provisions of the act, by which the legislature has thought fit to modify, annul, or materially alter, the law as it previously existed.

It has already been intimated that the changes effected by the act of last session in the Administration of the Law, are not confined in their operation to the suitors in bankruptcy. Many of the provisions of the act relate to matters only incidentally connected with the Court of Bankruptcy.

Warrants of attorneys, cognovits actionem, and judges' orders for judgment given by consent, are instruments with which every common law practitioner is necessarily more or less familiar; and as to the effect and validity of which it behoves him to be fully informed. Upon a close examination of the late act, it will be seen, however, that both the validity and the operation of those instruments is materially affected by its provisions.

The sections of the 12 & 13 Vict. c. 106, relating to warrants of attorney, cognovits, and judges' orders for judgments, may be considered,—1st. As respects the effect of such instruments when given by a party who afterwards becomes bankrupt; and 2ndly. As to the effect of non-compliance with the provisions of the acts for filing warrants of attorney and cognovits, and the extension of these directions to judges' orders.

To understand the scope and effect of the new act, it will be necessary shortly to recur to the previously existing state of the law as regards the validity of warrants of attorney and cognovits, given by a person subsequently becoming bankrupt.

When considering generally in a former number, (*ante*, p. 357,) how far transactions with persons who subsequently became bankrupt, and executions levied on their effects, were affected by the recent enactments, it was stated incidentally, that the old Bankrupt Act (6 Geo. 4, c. 16, s. 108,) established an important distinction between executions on judgments obtained in adverse suits, and those founded on warrants of attorney and cognovits; the section expressly providing "that no creditor, though for a valuable consideration, who shall sue out execution upon any judgment obtained by default, confession, or *nil dicit*, shall avail himself of such execution to the prejudice of other fair creditors, but shall be paid rateably with such creditors."

Whilst with regard to other executions, their validity depended upon the time when the seizure took place, the validity of an execution founded on a warrant of attorney or cognovit was determined by the time of sale; and if the goods seized under such execution were unsold at the time of the act of bankruptcy, the right of the assignees accrued, and the execution creditor having security for his debt, was considered to fall within the disabling provision of the 108th section.* The 2 & 3 Vict. c. 29,

* The modification of this section effected by the 1 Wm. 4, c. 7, s. 7, amounted to nothing more than a legislative declaration, that executions founded on warrants of attorney or cognovits, obtained in actions commenced adversely and not by collusion, were not to be deemed as falling within the provisions of the 6 Geo. 4, above cited.

whilst it introduced a substantial alteration in the law as regarded the validity of executions generally, by substituting the fiat for the bankruptcy, still left executions founded on cognovits or warrants of attorney, unprotected unless where the proceeding was perfected by sale. It was indeed at one time contended, that the proviso, at the end of the statute, that nothing in the act should "be deemed to give validity to executions on warrants of attorney or cognovits by way of fraudulent preference," gave validity to all executions on such instruments when not given by way of fraudulent preference; but this construction was repudiated by the Court, and the effect given to the proviso is, that executions on warrants of attorney or cognovits fraudulently given, though complete by sale before the fiat, are not within the protective provisions of the act. The effect of the 2 & 3 Vict. c. 29, was to substitute the issuing of the fiat, for the period of two months prior to the commission of the act of bankruptcy, as the time at which the right of the assignees was to accrue, or as expressed in the case of *Rumsey v. Eaton*,^b "to wipe out the act of bankruptcy altogether, (except where the creditor has notice of it,) and substitute the fiat." Where a warrant of attorney or cognovit was given by way of fraudulent preference, an execution and sale founded upon an instrument so given, were void, and the proceeds recoverable by assignees, although the sale took place before the fiat.^c

As regards consents to judges' orders for judgment, given by bankrupts at any time before the bankruptcy, we are not aware that they were the subject of any legislative provision, before the passing of the act of last session—or indeed of any decided case; but such consents,—are now placed,^d in the same category as warrants of attorney and cognovits, and the validity of these instruments in case of bankruptcy, is governed mainly by the provisions of the 135th section, which is as follows:—

"Every warrant of attorney to confess judgment in any personal action, given by any bankrupt after the commencement of this act, and within two months of the filing of a petition for adjudication of bankruptcy by or against such bankrupt, and being for or in respect of (wholly or in part) an antecedent debt or money demand, and every *cognovit actionem* or consent to a judge's order for judgment

given by any bankrupt, at any time after the commencement of this act, and within two months of the filing of any such petition in any action commenced by collusion with the bankrupt, and not adversely, or purporting to have been given in an action, but having been in fact given before the commencement of any action against the bankrupt, and such bankrupt being, at the time of giving such warrant of attorney, *cognovit actionem*, or consent (as the case may be), unable to meet his engagements, shall be deemed and taken to be null and void, whether the same shall have been given by such bankrupt in contemplation of bankruptcy or not."

It will be observed, that this enactment places warrants of attorney, cognovits, consents, and judges' orders, given by bankrupts, altogether upon a new footing. It does not affect the validity of instruments of this description, given more than two months before the filing of a petition for adjudication of bankruptcy, or given at any time when the party who subsequently becomes bankrupt is able to meet his engagements; but if given within two months of the filing of a petition for adjudication, and when the party giving the warrant of attorney, cognovit, or consent, is unable to meet his engagements, this section renders such warrant of attorney, cognovit, or consent, null and void, whether given in contemplation of bankruptcy or not. As already observed, both the 6 Geo. 4, c. 16, and the 2 & 3 Vict. c. 29, are wholly repealed by the act of last session, and therefore the validity of the class of instruments now under consideration, is no longer determined either by the date of the commission of an act of bankruptcy or the period of issuing a fiat. The turning point is now two months before the filing of a petition for adjudication. It is not every warrant of attorney, cognovit, or consent, given within two months of the filing of a petition of adjudication, and when the *giver* is unable to meet his engagements, however, that is void, nor are the provisions of the 135th section, as regards warrants of attorney, and cognovits and consents, in all respects identical! To render a warrant of attorney void, it must be "for or in respect of (wholly or in part) an antecedent debt or money demand," a qualification not extended to cognovits and consents. On the other hand, a cognovit, or consent to a judge's order for judgment, to be void under this section, must be given "in an action commenced by collusion with the bankrupt and not adversely, or purporting to have been given in an action, but having been in fact given before the commencement of any

^b Per Parke, B., 10 Mees. & W. 22.

^c *Turquand v. Vanderplank*, 10 Mees. & W. 180.

^d See the 12 & 13 Vict. c. 106.

action." What may have been the intention of the legislature in introducing the last proviso, is not quite clear, as it has always been understood, that there must be an actually existing suit to authorize a cognovit, and it was hardly necessary to declare, that a consent to a judge's order for judgment given before the commencement of an action, should be void, as a judge's order for judgment made under such circumstances could have no validity. The provisions above referred to, as well as that relating to the ability of the party giving the warrant, cognovit, or consent, "to meet his engagements," and indeed every part of this section, suggests many nice and difficult questions of construction, which it will be for the Courts hereafter to decide, and the determination of which it would be foreign to our present purpose to speculate upon.

The second division of the subject which relates to the alterations introduced in the law, by the provisions of the 12 & 13 Vict., as to filing warrants of attorney, cognovits, and judges' orders for judgment, also requires to be treated at some considerable length.

The provisions of the new act relating to the filing of warrants of attorney, cognovits, and consents to judges' orders for judgments, have caused a material alteration in the law as regards those instruments. To prevent frauds upon creditors from secret warrants of attorney, enabling the holder to sue out execution at any moment, whilst the debtor remained in possession of property, which as it appeared to be uncharged, induced others to give him credit, the legislature, by the 3 Geo. 4, c. 39, provided for the filing of warrants of attorney and cognovits within twenty-one days after execution. To enforce this provision it was specially enacted, that if at any time after twenty-one days from the execution of the instrument, the person giving the warrant of attorney or cognovit should be declared bankrupt, then, unless the instrument were filed as directed within twenty-one days from the execution, or unless judgment should have been signed or execution issued within the same period, the warrant of attorney or cognovit, and the judgment and execution thereon, should be deemed fraudulent and void against the assignees under a commission, who should be entitled to recover back, on behalf of the creditors, the monies levied or effects seized under such judgment and execution. Under these provisions the warrant of at-

torney or cognovit was not necessarily invalid where the directions of the act were not complied with. The instrument only became inoperative against assignees where the party by whom it was given subsequently became bankrupt or insolvent. When the execution of the instrument was not followed by bankruptcy or insolvency, if duly executed in other respects, filing was not essential to its validity, and even when bankruptcy or insolvency intervened, a judgment signed upon such an instrument was valid against the bankrupt or insolvent himself, and might be enforced against him, though not against his creditors.^c As it affected the interests of creditors, the security was liable to be defeated at any time, unless duly filed, by the bankruptcy or insolvency of the obligor,^f but under the express terms of the act, entering up judgment or issuing execution within twenty-one days was equivalent to filing the instrument as directed by the statute. Where a warrant of attorney was filed as directed by the act, the defeazance, if any, should, by the express terms of the act,^g be written on the same paper or parchment on which the warrant was written before the latter was filed, otherwise the instrument would be void against the assignees of the obligor, should he become bankrupt or insolvent, although it would still be valid as between the actual parties to the instrument.^h

The stat. 6 & 7 Vict. c. 66, enlarges the provisions of the 3 Geo. 4, c. 39, by directing that the officer of the Court in which warrants of attorney or cognovits are filed shall keep a book, containing the names, additions, and descriptions of the persons giving such warrants or cognovits, which book is open to all persons upon payment of a shilling.

It is only necessary to add, that in construing the provisions of the acts 3 Geo. 4, c. 39, and 6 & 7 Vict. c. 66, the Courts inclined to hold, that the presumption was in favour of the validity of the security, and that the assignee or other party, impeaching it, was bound to show that the instrument was not duly filed, and that a valid commission had issued against the obligor.ⁱ

Having stated what the law was in reference to filing warrants of attorney and

^c *Green v. Gray*, 1 Dowl. 350.

^f *Ewerett v. Wells*, 2 Scott, N. S. 525.

^g 3 Geo. 4, c. 39, s. 4.

^h *Morris v. Mellon*, 6 B. & C. 446; *Bennett v. Davis*, 10 B. & C. 500.

ⁱ *Airton v. Davis*, 9 Bing. 740; 3 M. & Sc. 138.

cognovits, we now proceed to consider what it is. The filing of warrants of attorney and cognovits is the subject of one section of the act 12 & 13 Vict., and the filing of judges' orders for judgments made by consent, the subject of a separate section. Section 136 is as follows:—

"That if, after the commencement of this act, any warrant of attorney to confess judgment in any personal action, or any *cognovit actionem* in any personal action, shall have been given by any such trader, and such warrant of attorney or *cognovit actionem*, or a true copy thereof shall not have been filed with the officer acting as clerk of the docquets and judgments in the Court of Queen's Bench, within twenty-one days next after the execution thereof in manner and form provided by an act passed in the third year of the reign of his late Majesty King George the Fourth, intitled 'An Act for preventing Frauds upon Creditors by secret Warrants of Attorney to confess judgment,' every such warrant of attorney and *cognovit actionem* shall be deemed fraudulent, null and void to all intents and purposes whatever; and if any such warrant of attorney or *cognovit actionem*, which shall be so filed as aforesaid, shall have been given subject to any defeazance or condition, such defeazance or condition shall be written on the same paper or parchment on which such warrant of attorney or *cognovit actionem* shall be written, before the time when the same or a copy thereof respectively shall be filed, otherwise such warrant of attorney or *cognovit actionem* shall be null and void to all intents and purposes whatever."

The effect of this section is simply to render all warrants of attorney and cognovits given by any trader, in a personal action, void against all persons and for all purposes, if the provisions of the 3 Geo. 4, c. 39, as to filing such instruments respectively have not been complied with. Some difficulty may arise as to the construction to be put upon the words "*such* trader," in section 136, for, upon looking into the act, we find it necessary to go back many sections before we find the word "trader" to which the pronoun "*such*" can refer. We apprehend, however, that the persons comprehended under the term premised include all liable as traders to become bankrupt and who are enumerated in section 65 of the new act. We apprehend it is quite clear, under the section above cited, that entering up judgment or issuing execution within twenty-one days, will no longer be deemed equivalent to filing, and that a warrant of attorney or cognovit not duly filed cannot be enforced against any of the parties, although the obligor should not become bankrupt or insolvent.

The provisions of the new act with regard to filing judges' orders for judgment by consent, are altogether novel, as no legislative enactments previously existed on this subject, and the regulations made by the judges upon granting such orders were framed only with a view to the protection of the parties named in such orders, and not to prevent frauds on third persons. The enactment relating to filing judges' orders is as follows:—

"That every judge's order made by consent given after the commencement of this act by any such trader defendant in any personal action, and whereby the plaintiff in such action shall be authorized forthwith, after the making of such order, or at any future time, to sign or enter up judgment, or to issue or take out execution in such action, and whether such order shall be made subject to any defeazance or condition or not, in case the action in which such order shall be made shall be in the Court of Queen's Bench, or in case the action wherein the same is made shall be in any other Court, a true copy of such order shall, together with an affidavit of the time of such consent being given, and a description of the residence and occupation of the defendant, be filed with the officer acting as clerk of the docquets and judgments in the said Court of Queen's Bench within twenty-one days after the making of such order, in like manner as a warrant of attorney in any personal action, and a *cognovit actionem* given by any defendant in any personal action, or copies thereof and affidavits of the execution thereof respectively, may be filed with the said clerk, within the space of twenty-one days after such warrant of attorney or *cognovit actionem* shall have been executed, otherwise such judge's order, and any judgment signed or entered up thereon, and any execution issued or taken out on such judgment shall be null and void to all intents and purposes whatever, and the provisions respectively contained in the acts [reciting 3 Geo. 4, c. 39, and 6 & 7 Vict. c. 66,] for liberty to file warrants of attorney and cognovits *actionem*, or copies thereof, with the clerk of the docquets and judgments, and for the said clerk to make certain entries and search in relation thereto, and for entering satisfaction thereon, and for fees of search and filing and taking office copies, shall extend and be applicable to every such judge's order, in like manner as to warrants of attorney and *cognovits actionem* mentioned in the said acts." (sect. 137.)

The effect of this section is to place judges' orders made by consent, authorising the signing of judgment or issuing execution, precisely upon the same footing as warrants of attorney or cognovits given in personal actions. If such orders are not filed within the time specified,—i. e., within twenty-one days after the making there-

of—together with an affidavit of the time the consent was given, and a description of the residence and occupation of the defendant, the order, as well as any judgment or execution founded thereon, is declared absolutely void.

It would be premature to anticipate how this provision will operate practically, but as the enactment only relates to orders made by consent, and as it imposes additional labour and responsibility on those engaged in Common Law practice, and inevitably adds to the costs of suitors, it is not unreasonable to suppose, that the parties to actions who are desirous to stay proceedings and put an end to litigation, will hereafter devise some expedient for effecting their object, less inconvenient and expensive than a judge's order for judgment has now become.

NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

HOUSE OF LORDS' COSTS TAXATION ACT, 1849.

12 & 13 VICT. c. 78.

THE preamble to this act recites the 7 & 8 Geo. 4, c. 64, establishing a taxation of costs on private bills in the House of Lords, and states that it is expedient to repeal the same and make more effectual provision for taxing the costs and expenses charged by parliamentary agents, attorneys, solicitors, and others in respect of bills subject to the payment of fees in parliament, commonly called private bills, and incurred in complying with the standing orders of the House of Lords, relative to such bills, and in preparing, bringing in, and carrying the same through, or in opposing the same in the House of Lords, and to facilitate the taxation of other costs in respect of private bills in certain cases. It is therefore enacted :

1. That the 7 & 8 Geo. 4, c. 64, be repealed, except as to costs in the present or preceding Sessions.

2. That parliamentary agents, attorneys, and solicitors shall not sue for their costs until one month after their bills shall be delivered or sent by post, with power to a judge to order or arrest before the expiration of the month, on proof that the party is about to quit the kingdom.*

3. The clerk of parliaments or clerk assistant shall appoint a taxing officer.

This provision resembles the 37th section of 6 & 7 Vict. c. 78.

4. The clerk of parliaments or clerk assistant shall prepare a list of charges to be allowed to parliamentary agents, attorneys, solicitors, and others.

5. The taxing officer is empowered to examine the parties and their witnesses on oath.

6. The taxing officer is also empowered to call for books and papers.

7. The taxing officer is to take such fees as the House of Lords may authorize, and account for them as the House may direct.

8. On the application of the party chargeable with the costs claimed, or on application of the parliamentary agent, attorney, or solicitor, the taxing officer shall tax the bill ; but no application is to be entertained after a verdict has been obtained.^b

9. The taxing officer is to report to the clerk of parliaments the amount of costs ; and if either party complain of the report, they may deposit a memorial, and the clerk of the parliaments may require a further report. If no memorial be deposited, the clerk of parliaments may issue a certificate of the amount found due, and the certificate is to have the effect of a warrant to confess judgment.^c

10. The taxing officer of either House may tax costs not otherwise taxable under the act, by virtue of which any bill shall be taxed, and may request other taxing officers to assist him. Such officers to have the same powers as in taxing other costs.

11. The taxing officers to include such costs in their reports and certificates of the amount to be delivered.

12. The taxing officers of other courts may request the taxing officer of either House to tax parts of bills.

13. The taxing officer of either House may take an account between the parties.

14. Interpretation clause.

15. Short title of the act :

"The Houses of Lords' Costs Taxation Act, 1849."

The following are the sections in full :

An Act for the more effectual Taxation of Costs on Private Bills in the House of Lords, and to facilitate the Taxation of other Costs on Private Bills in certain Cases. [28th July, 1849.]

1. That, except as to any costs, charges, and expenses which shall have been incurred

^b This section is like the 38th of 6 & 7 Vict. c. 78.

^c This is to the same effect as 6 & 7 Vict. c. 78, s. 43.

in the present or any preceding Session of Parliament, the 7 & 8 G. 4, c. 64, shall be repealed.

2. That no parliamentary agent, attorney, or solicitor, nor any executor, administrator, or assignee of any parliamentary agent, attorney, or solicitor, shall commence or maintain any action or suit for the recovery of any costs, charges, or expenses in respect of any proceedings in the House of Lords in any future Session of Parliament relating to any petition for a private bill, or private bill, or in respect of complying with the standing orders of the said house relative thereto, or in preparing, bringing in, and carrying the same through, or opposing the same in, the House of Lords, until the expiration of one month after such parliamentary agent, attorney, or solicitor, or executor, administrator, or assignee of such parliamentary agent, attorney, or solicitor, has delivered unto the party to be charged therewith, or sent by post to or left for him at his counting-house, office of business, dwelling-house, or last known place of abode, a bill of such costs, charges, and expenses, and which bill shall either be subscribed with the proper hand of such parliamentary agent, attorney, or solicitor, or in the case of a partnership by any of the partners, either with his own name or with the name of such partnership, or of the executor, administrator, or assignee of such parliamentary agent, attorney, or solicitor, or be enclosed in or accompanied by a letter subscribed in like manner referring to such bill: Provided always, that it shall not in any case be necessary, in the first instance, for such parliamentary agent, attorney, or solicitor, or the executor, administrator, or assignee of such parliamentary agent, attorney, or solicitor, in proving a compliance with this act, to prove the contents of the bill delivered, sent, or left by him, but it shall be sufficient to prove that a bill of costs, charges and expenses, subscribed in manner aforesaid, or enclosed in or accompanied by such letter as aforesaid, was delivered, sent, or left in manner aforesaid; but nevertheless it shall be competent for the other party to show that the bill so delivered, sent, or left was not such a bill as constituted a *bond fide* compliance with this act: Provided also, that it shall be lawful for any judge of the Superior Courts of Law or Equity in England or Ireland, or of the Court of Session in Scotland, to authorize a parliamentary agent, attorney, or solicitor to commence an action or suit for the recovery of his costs, charges, and expenses against the party chargeable therewith, although one month has not expired from the delivery of a bill as aforesaid, on proof to the satisfaction of the said judge that there is probable cause for believing that such party is about to quit that part of the United Kingdom in which such judge hath jurisdiction.

3. That the Clerk of the Parliaments, when discharging the duties of his office in person, or in his absence the clerk assistant, shall appoint a fit person to be the taxing officer of

the House of Lords; and every person so appointed shall hold his office during the pleasure of the clerk of the parliaments or clerk assistant, and shall execute the duties of his office conformably to such directions as he may from time to time receive from the clerk of the parliaments or clerk assistant.

4. That the clerk of the parliaments, when discharging the duties of his office in person, or in his absence the clerk assistant, may from time to time prepare a list of such charges as it shall appear to him that, after the present Session of parliament, parliamentary agents, attorneys, solicitors, and others may justly make with reference to the several matters comprised in such list; and the several charges therein specified shall be the utmost charges thenceforth to be allowed upon the taxation of any such bill of costs, charges, and expenses in respect of the several matters therein specified: Provided always, that the said taxing officer may allow all fair and reasonable costs, charges, and expenses in respect of any matters not included in such list.

5. That for the purpose of any such taxation the said taxing officer may examine upon oath any party to such taxation, and any witnesses who may be examined in relation thereto, and may receive affidavits, sworn before him or before any Master or Master Extraordinary of the High Court of Chancery, relative to such costs, charges, or expenses; and any person who on such examination on oath or in any such affidavit shall wilfully or corruptly give false evidence shall be liable to the penalties of wilful and corrupt perjury.

6. That the said taxing officer shall be empowered to call for the production of any books or writings in the hands of any party to such taxation relating to the matters of such taxation.

7. That it shall be lawful for the said taxing officer to demand and receive for any such taxation such fees as the House of Lords may from time to time by any order authorize and direct, and to charge the said fees, and also to award costs of such taxation against either party to such taxation, or in such proportion against each party as he may think fit, and he shall pay and apply the fees so received by him in such manner as shall be directed by any such order as aforesaid.

8. That if any person upon whom any demand shall be made by any parliamentary agent, attorney, or solicitor, or executor, administrator, or assignee of such parliamentary agent, attorney, or solicitor, or other person, for any costs, charges, or expenses in respect of any proceedings in the House of Lords in any future Session of Parliament relating to any petition for a private bill, or private bill, or in respect of complying with the standing orders of the said house relative thereto, or in preparing, bringing in, or carrying the same through, or in opposing the same in, the House of Lords, or if any parliamentary agent, attorney, or solicitor, or the executor, administrator, or assignee of such parliamentary

agent, attorney, or solicitor, or other person, who shall be aggrieved by the nonpayment of any costs, charges, and expenses incurred or charged by him in respect of any such proceedings as aforesaid, shall make application to the said taxing officer at his office for the taxation of such costs, charges, and expenses, the said taxing officer, on receiving a true copy of the bill of such costs, charges, and expenses which shall have been duly delivered as aforesaid to the party charged therewith, shall in due course proceed to tax and settle the same; and upon every such taxation, if either the parliamentary agent, attorney, or solicitor, or the executor, administrator, or assignee of such parliamentary agent, attorney, or solicitor, or other person, by whom such demand shall be made as aforesaid, or the party charged with such bill of costs, charges, and expenses, having due notice, shall refuse or neglect to attend such taxation, the said taxing officer may proceed to tax and settle such bill and demand *ex parte*; and if pending such taxation any action or other proceeding shall be commenced for the recovery of such bill of costs, charges, and expenses, the Court or judge before whom the same shall be brought shall stay all proceedings thereon until the amount of such bill shall have been duly certified by the clerk of the parliaments or clerk assistant as herein-after provided: Provided always, that no such application shall be entertained by the said taxing officer if made by the party charged with such bill after a verdict shall have been obtained or a writ of inquiry executed in any action for the recovery of the demand of any such parliamentary agent, attorney, or solicitor, or the executor, administrator, or assignee of such parliamentary agent, attorney, or solicitor, or other person, or after the expiration of six months after such bill shall have been delivered, sent, or left as aforesaid; Provided also, that if any such application shall be made after the expiration of six months as aforesaid it shall be lawful for the clerk of the parliaments or clerk assistant aforesaid, if he shall so think fit, on receiving a report of special circumstances from the said taxing officer, to direct such bill to be taxed.

9. That the said taxing officer shall report his taxation to the clerk of the parliaments or clerk assistant as aforesaid, and in such report shall state the amount fairly chargeable in respect of such costs, charges, and expenses, together with the amount of costs and fees payable in respect of such taxation as aforesaid, and shall also state in such report the amount due in respect of the said costs, charges, and expenses; and within twenty-one clear days after any such report shall have been made either party may deposit in the office of the clerk of the parliaments a memorial, addressed to the clerk of the parliaments or clerk assistant as aforesaid, complaining of such report or any part thereof, and such clerk of the parliaments or clerk assistant as aforesaid may, if he shall so think fit, refer the same, together with such report, to the said taxing

officer, and may require a further report in relation thereto, and on receiving such further report may direct the said taxing officer, if necessary, to amend his report; and if no such memorial be deposited as aforesaid, or so soon as the matters complained of in any such memorial shall have been finally disposed of, such clerk of the parliaments, or clerk assistant as aforesaid shall, upon application made to him, deliver to the party concerned therein, and requiring the same, a certificate of the amount so ascertained, which certificate shall be binding and conclusive on the parties as to the matters comprised in such taxation, and as to the amount of such costs, charges, and expenses, and the amount due in respect of the same, and of the costs and fees payable in respect of such taxation, in all proceedings at law or in equity or otherwise; and in any action or other proceeding brought for the recovery of the amount so certified to be due such certificate shall have the effect of a warrant of attorney to confess judgment; and the Court in which such action shall be commenced, or any judge thereof, shall, on production of such certificate, order judgment to be entered up for the sum specified in such certificate, in like manner as if the defendant in any such action had signed a warrant to confess judgment in such action to that amount: Provided always, that if such defendant shall have pleaded that he is not liable to the payment of such costs, charges, and expenses, such certificate shall be conclusive only as to the amount thereof which shall be payable by such defendant in case the plaintiff shall in such action recover the same.

10. That if any bill of costs taxable by virtue of this act, or of "the House of Commons Costs Taxation Act, 1847," shall comprise any costs, charges, and expenses incurred in respect of a private bill, but not taxable by virtue of the act in pursuance whereof such bill shall come to be taxed, it shall be lawful for the taxing officer of the House of Lords, or for the taxing officer of the House of Commons, as the case may be, either to tax and settle such last-mentioned costs, charges, and expenses, or to request the taxing officer of the other house of parliament, or the proper officer of any other Court having such an officer, to assist him in taxing and settling any part of such bill; and such officer so requested shall thereupon proceed to tax and settle the same, and shall return the same, with his opinion thereupon, to the officer who shall have so requested him to tax and settle the same; and in taxing such costs, charges, and expenses the taxing officer of the House of Lords and the taxing officer of the House of Commons respectively shall have the same powers and may receive the same fees in respect of such taxation as if such costs, charges, and expenses were taxable by virtue of this act, or of the "House of Commons' Costs Taxation Act, 1847," as the case may be; and the proper officer of any Court so requested to tax the same shall have the same powers and

may receive the same fees as upon a reference from the Court of which he is such officer.

11. That the taxing officer of the House of Lords, or the taxing officer of the House of Commons, as the case may be, may include the amount of such last-mentioned costs, charges, and expenses in the report of the taxation of any such bill of costs; and in case the clerk of the parliaments or clerk assistant, or the Speaker of the House of Commons, as the case may be, shall deliver a certificate of the amount so ascertained and declared in such report, including such last-mentioned costs, charges, and expenses, such certificate shall have the same force and effect as if the whole of such bill of costs were taxable by virtue of the act in pursuance whereof such certificate shall be so delivered.

12. That in case the taxing officer of the House of Lords, or the taxing officer of the House of Commons, shall be requested by the proper officer of any other Court to assist him in taking and settling any costs, charges, and expenses incurred in respect of a private bill, being part of any bill of costs which shall have been referred to him by the Court of which he is such officer, such taxing officer so requested shall thereupon proceed to tax and settle the same, and shall return the same, with his opinion thereupon, to the officer who shall have so requested him to tax and settle the same, and shall have the same powers and may receive the same fees in respect of such taxation as if application had been made to him for the taxation thereof in pursuance of this act, or of the "House of Commons' Costs Taxation Act, 1847," as the case may be.

13. That it shall be lawful for the taxing officer of the House of Lords and for the taxing officer of the House of Commons to take an account between the parties to any taxation under this act or the "House of Commons' Costs Taxation Act, 1847," of all sums of money paid or received in respect of any bill of costs which is the subject of such taxation, or any matters contained therein, and to report the amount of all such sums of money and the amount due in respect of such bills of costs.

visions suggested, (see *ante* p. 337.) The important changes effected by this measure in 'Quarter Sessions' procedure has since induced Mr. Foot, who is eminently and peculiarly well-qualified for the task, to prepare a copy of the act, to which he has added copious and elaborate notes which cannot fail to prove useful to all who are concerned in Quarter Sessions' practice.

The learned author has prefaced his edition of the act by a clear and well-written exposition of the alterations produced by its provisions, the tendency of which undoubtedly is, to establish a uniformity of practice in certain matters of detail, in respect of which great uncertainty and diversity at present exist. We have already expressed our regret, that the principle of uniformity in a matter of practice has been marred by the exclusion, by way of exception, of large classes of cases, to which, as it appeared to us, the principle might have been conveniently and safely applied. The most striking example of this defect in the act is furnished at the outset, where by the first section fourteen days are fixed as a uniform period for notice of appeal "in every case of appeal, except those after-mentioned," and the exception, when examined, is found to be more comprehensive than the enacting clause, including many classes of cases of the most frequent recurrence. Mr. Foot's note on the words of the first section, "in every case of appeal," &c., is as follows:—

"This section, it will be seen, is of a similar character to the 4th section of 5 & 6 Vict. c. 54, which enacts, that 'in all cases where notice of action is required, such notice shall be given one calendar month at least before any action shall be commenced.' It must, however, be remembered, that not only is it confined to appeals to the General or Quarter Sessions, but that by the exception all cases of appeal against summary convictions, orders of removal, orders under the statutes relating to pauper lunatics, orders in bastardy, and against revenue proceedings, as defined by the second section, are excluded from its operation. It has no application, therefore, to appeals to Special Sessions against poor rates, under 6 & 7 Will. 4, c. 96, s. 6, or to any others of a similar character, although it includes those cases where the parties dissatisfied with the decision of the Special Sessions appeal from that decision to the General or Quarter Sessions. Such appeals may therefore still be heard, notwithstanding that only a seven days' notice has been given, as required by the proviso to the 6th section of 6 & 7 Will. 4, c. 96, or any other length of notice appointed by the particular statute under which such appeal takes place. But if either party appeals from

NOTICES OF NEW BOOKS.

A Practical Commentary on the Effect and Operation of the General and Quarter Sessions' Procedure Act, (12 & 13 Vict. c. 45,) with the Statute, Index, and Title of Cases. By JAMES A. FOOT, Esq., Barrister-at-Law. Shaw & Sons, Fetter Lane.

WE have already laid before our readers the act framed by the learned President of the Poor Law Board, and passed through parliament under his superintendence during the last Session; together with such comments as a hasty consideration of its pro-

the decision of the Special Sessions, he must then conform to the provisions of this statute."

The notes annexed to the sections of the act relating to the amendment of recognizances and indictments, and the new powers conferred on the Sessions and the parties in respect of special cases and references to arbitration, contain a complete and accurate analysis of the statute law, and the recent decisions bearing upon those topics. As already observed, amongst the most important provisions of the new act, is that by which orders of Sessions may be enforced by a simple and summary proceeding. The effect of the section by which this change is effected, (section 18,) is thus described in the volume before us:—

"The present section provides an effectual and summary mode of enforcing all orders of Sessions whatever, whether confirmed by the Court above or not; provided, however, that they be made subsequently to the 1st November, 1849. Upon application to the Court of Queen's Bench, or to any judge of that Court at chambers, either in Term time or in Vacation, and upon production of a copy of the order under the hand of the Clerk of the Peace or his deputy, and upon proof (by affidavit as it would seem) of a refusal or neglect to obey the order, the Court or a judge, as the case may be, will make an order directing that of the Court of Quarter Sessions to be removed into the Court of Queen's Bench, and then it may be enforced by attachment issuing out of the Court of Queen's Bench just in the same manner as if it were a rule of that Court. The costs attending the application and removal may also be recovered in the same manner as though they were mentioned in and formed part of the order." (Note F., p. 67.)

Not only has each section of the act, but every part of every section, been considered and commented upon with equal accuracy and care by Mr. Foot, who has done more to render its enactments clear and intelligible than we could have supposed possible in reference to a measure the provisions of which have not yet been subject to any practical test, inasmuch as the act does not come into operation until the 1st November next.

MR. COMMISSIONER AYRTON AND THE LONDON COMMITTEE

ON THE BANKRUPT LAWS.

In the Sixth Report of the London Committee appointed to promote the Amendment of the Bankrupt Law, dated August 3, 1849, it is stated, that

"The Committee feel that the success of this measure in checking the rapid progress of commercial fraud is dependent on the Commissioners; and they trust that means will be taken by those in authority, not only to prevent the recurrence of conduct by Commissioners in the country, (which has been noticed in Parliament,) but to secure the appointment of those who will duly appreciate and efficiently discharge the new legal and moral duties entrusted to them under this act."

On the 6th September Mr. Ayrton, one of the country Commissioners, addressed the chairman of the Committee, stating that

"This being a general statement, and without any words of exception or qualification, *primæ facie* appears to include myself, as being a country Commissioner. This statement, coming from so important a body as a Committee of London merchants has, in my opinion, so much weight, that I am induced to depart from the rule that persons in my situation ought not to enter into any correspondence concerning strictures on their conduct. If, then, I am included in the statement, I wish to be informed in what respect the London merchants conceive my conduct to be erroneous, in order that I may give their opinion my best consideration. If, on the other hand, I am not so included, it would be satisfactory to be so informed."

Mr. W. Hawes, the Chairman of the Committee, on the 12th September, thus answered:

"I feel obliged to decline on behalf of the Committee replying to your inquiry, but I have no objection to state in general terms that the Committee understood the observations which were made in the House of Commons to refer mainly to the pecuniary difficulties in which it is notorious some of the Commissioners in the country have been placed. I hope this remark will be satisfactory to you."

Mr. Ayrton, on the 14th, replied as follows:—

"Judging from the general terms of your communication, it affords me much pleasure to infer, that in your opinion, I am not implicated in the 6th Report of the Committee of the Bankrupt Laws. As, however, the Committee decline to vouchsafe any specific reply to my inquiry, I conceive myself justified in expressing my surprise and regret that so respectable a body should have thought fit to make, or insinuate, charges against a body of gentlemen acting in a judicial capacity, which they are not prepared to substantiate, or inclined to withdraw, when called on so to do with reference to one of the body who considers himself aggrieved by being unjustly included in such insinuation or charges. As the Committee decline to clear me from the imputation of the general charges, I am compelled to take further steps for my own justification, and therefore must consider myself at liberty to give some publicity to our correspondence,

unless in the course of a few days I hear further and more satisfactorily from the Committee on the subject."

At a meeting of the Committee on 24th September, William Hawes, Esq., in the Chair, the correspondence between Mr. Hawes and Mr. Commissioner Ayrton, and the paragraph in the sixth report of the Committee to which it refers having been read, it was resolved unanimously—

"That the Committee does not consider it incumbent upon it to make any further reply to Mr. Commissioner Ayrton than that already afforded by the Chairman, beyond referring him to the proceedings in parliament upon the subject of the Bankrupt Law Amendment Bill."

This resolution having been communicated to Mr. Ayrton, that gentleman has printed the correspondence with the following observations:—

"From the resolution it appears that the Committee feels itself, as a body, authorized to make charges of incapacity or misconduct, which it will neither substantiate nor withdraw; a course of proceeding which would render any individual of the body liable to the imputation of acting in a manner which no honourable man would condescend to palliate, much less to justify."

"It is manifestly useless, indeed absurd, to refer generally to proceedings in parliament on the subject, instead of pointing out something particular relating to the matter. I am wholly ignorant of what 'proceedings' are adverted to,—admitting for a moment that such actually did occur,—but, I am driven, in my own vindication, to avow my belief that the Committee is not only incapable of referring to any parliamentary proceedings implicating me, but are fully aware of their inability to produce any justification whatever of their charge against me, as one of the country Commissioners."

"An able writer in the *Legal Observer*, who does not admire the taste and spirit in which this portion of the report is drawn up, remarks that 'great additional responsibility is thrown upon the Commissioners, under the provisions of this act, and in the performance of those duties, they are fairly intitled to the assistance of the legal profession, as well as to the respectful consideration of the public, whose interests are rarely promoted by disparaging or discouraging those who fill public offices.'"

"The power of the Commissioners to discharge their duties efficiently, depends, in a considerable degree, on the character they maintain: but how is this character to be supported if they are exposed to unworthy, indefeasible insinuations—if all explanation or reparation is refused, by those who have the temerity to publish unsupported charges, the more dangerous because vague?"

ANNUAL REGISTRATION OF ATTORNEYS.

It is suggested that the London agents, who have a considerable number of certificates to take out for their provincial clients, should now apply at the office of the Incorporated Law Society, and procure the forms of Declaration which are supplied gratis.

There being nearly ten thousand certificates to fill up and examine with the Roll, it is desirable that ample time should be allowed to the Registrar to complete his labours.

The declaration must contain the name and place of residence of the attorney or solicitor, and one of the courts of which he is admitted, together with the term and year in or as of which he was so admitted.

It must be signed by such attorney or solicitor, or by his partner, or, in case such attorney or solicitor shall reside more than twenty miles from London, by his London agent on his behalf.

No declaration can be acted upon which does not contain all the particulars required by the act of parliament.

Every declaration must be delivered at the office six days before a certificate can be granted.

NOTES ON THE CIRCUIT.

CROSS-EXAMINATION OF WITNESSES.—HANDWRITING.

IN a trial at Croydon, on the 9th August, of *Lloyd v. Lecoutre*, in an action on a bill of exchange, the defence set up was, that the acceptance was a forgery. Several respectable witnesses were examined, all of whom appeared to have had extensive transactions with the defendant, and they stated that, although there was a resemblance in the acceptance to the writing of the defendant, yet from the character of the writing, they expressed a confident opinion that the signature was not genuine.

Mr. Bovill subjected the witnesses to a very rigorous cross-examination upon the subject of the handwriting, and placed in their hands the receipts written by the defendant, but so folded up as only to exhibit a small portion of the writing; and upon this slight opportunity for forming an opinion he pressed them to state whether the documents were the hand-writing of the defendant; and one of them gave his opinion that the receipt, which undoubtedly had been written by the defendant, was not his writing.

The Chief Baron observed that, although the learned counsel undoubtedly was entitled to adopt this mode of examination, yet he must say he considered there was a great laxity in the rule of law upon the subject, and that it was very unfair to a witness only to show him a few words of a written document and require him to give an opinion with regard to the handwriting. He could only say for himself that, if he were called upon under such circumstances to give an opinion with regard to his own handwriting, he did not think he should be able to speak positively upon the subject.

RECENT DECISIONS IN THE SUPERIOR COURTS.

AND SHORT NOTES OF CASES.

Vice-Chancellor of England.

Granville v. Betts. July 25, 26, 1849.

BILL OF REVIVOR AND SUPPLEMENT.—
DEMURRER.—SPECIFIC PERFORMANCE
OF CONTRACT.

A demurrer was overruled to a re-amended bill of revivor and supplement filed for specific performance of a contract for a per centage, alleged to have been entered into by two letters, on the importation of Selzer and other mineral waters into this country.

THIS was a demurrer to a re-amended bill of revivor and supplement for the purpose of taking advantage of the original, filed by Dr. Granville against Mr. Betts, deceased, for the specific performance of a contract said to be contained in two letters, by which the plaintiff was to have a per centage on the Selzer and other mineral waters imported into this country, in consideration of his obtaining an agreement from the Duke of Nassau, giving the defendant the exclusive right of importing such mineral waters.

Stuart and Sparling, in support of the demurrer, contended, that the agreement was not concluded, but merely in negotiation, and that the contract which was obtained from the Duke of Nassau was not obtained through the plaintiff's interest.

Bethell and Tripp, contra.

The Vice-Chancellor held, that there was sufficient on the face of the bill to overrule the demurrer, and allow the plaintiff to establish his case at the hearing.

Vice-Chancellor Knight Bruce.

Rains v. Hertslet. July 5, 7, 10, 17, 1849.

INJUNCTION.—COMMISSIONERS OF SEWERS.
—POWERS.

An interim injunction was granted restraining the Commissioners of Metropolitan Sewers from interfering with the plaintiff's lands, where he had not received notice under the 60th section of the 11 & 12 Vict. c. 112,—it not appearing a case within the 61st section, which might however be tried at law.

THIS was a motion for an injunction to restrain the Commissioners of Metropolitan Sewers from interfering with the plaintiff's lands, or a mill, at Bermondsey, called St. Saviour's Mill, and its streams, under the Sewers' Act, 11 & 12 Vict. c. 112. The motion had been ordered to stand over in order that the Commissioners might submit a plan of their intended operations, and for the plaintiff to adduce further evidence as to the interference with his lands.

Malins and H. Stephens, in support of the

motion, urged that the apprehensions of the Commissioners relating to the danger to public health were unfounded, and that the notice to the plaintiff had not been given according to section 60.

Russell, J. Henderson, and C. Hall, contra, cited *Kerrison v. Sparrow*, 18 Ves. 449; 23 Hen. 8, c. 5; 11 & 12 Vict. c. 112, ss. 37, 38, 61, 145.

The Vice-Chancellor held, that the acts of the Commissioners were not warranted by the 61st section of the Sewers' Act. That point, however, might be decided at law. In the meantime, the motion for an injunction would be granted, but without prejudice to the Commissioners doing such acts as might be necessary to complete the works described in the plan submitted to the Court, and to the plaintiff taking such proceedings at law as he might be advised.

In re Ipswich, Norwich, and Yarmouth Railway Company. July 13, 1849.

WINDING-UP ACT.—COSTS OF ATTENDING
THE MASTER.

The Court has not jurisdiction upon a petition to discharge an order of reference for winding-up under the 11 & 12 Vict. c. 45, to adjudicate on costs incurred by parties attending before the Master under that order.

AN order having been made, (see p. 451, ante,) discharging with costs a petition for winding-up the above company under the 11 & 12 Vict. c. 45, *W. T. S. Daniel*, for parties who had been compelled to appear under the order before the Master, asked for the expenses so inflicted on them by the former petitioner, Mr. Green.

The Vice-Chancellor, however, held, that the Court had no jurisdiction upon the petition for the discharge of an order under the 11 & 12 Vict. c. 45, to adjudicate upon the costs incurred as stated. The application must therefore be refused, without prejudice, however, to any further application by the parties as they may be advised.

Attorney-General v. Gibbs and another.
July 27, 1849.

CHARITY ESTATES.—PAYMENT OUT OF
COURT.—NEW TRUSTEES.—CHURCHWARDENS
AND OVERSEERS.

A petition for payment out of Court of a sufficient sum to the churchwardens and overseers in discharge of debts and liabilities, was refused on the ground that, irrespective of a doubt as to the title of two of the petitioners to be de jure church-

wardens, the Master was about to appoint trustees for the charity estates which comprised the fund in Court.

THIS petition was presented by the churchwardens and overseers of St. Stephen's Walbrook, and prayed that a sufficient sum might be paid out of certain funds in Court derived from the rents of the charity property, to meet the debts and liabilities due to the petitioners and to the City of London Union for the maintenance of the poor, and that the receiver might pay the rents over to them as received, to be applied in relief of the poor-rate.

Russell and Bigg in support of the petition; Roundell Palmer and Bates for the relator; Lloyd and Rogers for the respondents.

The Vice-Chancellor said, that as there was a question whether two of the petitioners were *de jure* and *de facto* the churchwardens, and the Master had appointed, and was about to appoint new trustees of the charity property, the fund could not be paid out. The petitioners might, however, attend the Master under the orders now before him, so far as anything remained to be done. The costs to be reserved.

Queen's Bench.

Regina (Ex parte Mertz) v. Blene. June 6, 13, 1849.

ORDER IN BASTARDY.—FOREIGNER.—CERTIORARI.

Rule absolute to quash an order in bastardy, brought up by certiorari, on the ground that the child was born in France and of a Frenchwoman, and therefore could not be chargeable on any parish in England.

A RULE nisi had been obtained in this case for a certiorari, to bring up an order in bastardy, made by Mr. Bingham, and also the order of the Middlesex Quarter Sessions, confirming the same, in order to their being quashed. The grounds on which the rule had been granted were,—1. That the child being born in France of a Frenchwoman, the magistrate had no jurisdiction; 2. That before Mr. Bingham had made the order appealed against, the matter had been investigated by Mr. Broderip, at the Westminster Police Court, and had been dismissed; and 3. That it was not stated in the order of Quarter Sessions that the evidence of the mother had been corroborated by any other testimony.

Parry and J. Brown, against the rule, cited 7 & 8 Vict. c. 101, s. 2; 8 & 9 Vict. c. 10, s. 9; *Fabrigas v. Mostyn*, 2 W. Bl. 929.

Pashley in support of the rule.

The Court said, that on a general reference to the statutes 7 & 8 Vict. c. 101, 8 & 9 Vict. c. 10, it appeared that as the child could not become chargeable to any parish in England, owing to its being born in France, the order must be quashed.

Rule absolute accordingly.

Whalley v. Macconnell. July 5, 1849.

ASSAULT AND IMPRISONMENT.—JUSTIFICATION.—WRONG PERSON.

A rule nisi to set aside a verdict obtained in an action for assault and imprisonment, was discharged—it appearing that the summons in the plea mentioned as justifying the arrest, was issued under the 9 & 10 Vict. c. 95, s. 98, against another person, and forced on the plaintiff, who was afterwards committed under the 99th section under the same mistake.

A RULE nisi had been obtained to set aside a verdict obtained in an action for assault and false imprisonment, and enter a nonsuit. The trial took place before Mr. Justice Erie, when it appeared that the defendant had under the authority of a writ issuing out of the County Court, against one Ireland, a carter, at Liverpool, taken the plaintiff in custody. An apprentice of the creditor having been sent to look after Ireland with a summons, proceeded to where the carters were accustomed to meet, and upon the plaintiff being pointed out to him as Ireland, and (as the apprentice said) having answered to that name, he left the writ. No notice having been taken of such summons, the plaintiff was served with a summons on charge of fraud under the 9 & 10 Vict. c. 95, s. 98, and as he did not attend, was convicted under the 99th section. The plaintiff alleged, that he had not admitted his name to be Ireland, but had denied it. A verdict having been obtained for the plaintiff, this rule had been granted.

The Court said, that the summons which issued was against another man, and was forced on the plaintiff, in the belief that he was the debtor, and was therefore no justification for the assault and imprisonment. The rule must therefore be discharged.

Jenkins v. Hutchinson. July 11, 1849.

CHARTER-PARTY.—AGENT.—MISREPRESENTATION.

Held, that an agent who signs a charter-party not under seal, as such, but without authority to do so, is not liable in an action on the contract.

Semble, he is liable in an action for representing himself as the agent.

This was an action upon a charter party not under seal, against the defendant, who had signed as agent, intending to bind his principal, but without authority to do so.

The Court held, that although the defendant might be liable for representing himself as the agent when he was not, he could not be sued upon the contract. The case of *Pellicci v. Walter*, 3 B. & Ad. 114, related to an action on a bill of exchange, and did not apply to the present case.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Common Law.

PLEADING.

[Concluded from our last number.]

RAILWAY COMPANY.

To a declaration on an indenture made between the plaintiff and defendants, provisional directors of a projected railway company, called the Direct Northern, after reciting that plaintiff was owner of certain lands, through which that railway and another, called the Great Northern, were intended to pass, and that the plaintiff would support the former and oppose the latter line, it was covenanted that, if the Direct Northern's Bill should pass, before six months from the date of the deed, the company should pay the plaintiff certain large sums of money in certain specified cases for the injury done to, and for the purchase of, his land; that, if the Great Northern's Bill should pass within 18 months from the same date, that the Direct Northern was to pay the plaintiff, within three months after that event, certain sums of money, in certain specified cases, for compensation, &c.; *provided* that, if no act authorising the Direct Northern to make their line should be passed within six months from the date of the indenture, either party might put an end to the agreement by giving notice in writing, and that, after the giving of such notice, the agreement and everything contained in it should be absolutely null and void, except the proviso, and a covenant as to certain costs to be paid to the plaintiff; and *lastly*, that if the companies should be amalgamated, that then, three months after such event, the amalgamated companies should pay certain sums of money in certain events, one of these being the sum of 6,000*l.*, if the line followed the course of the direct line, without a branch to Stamford, and that in such case all the covenants applicable were to be performed by the amalgamated companies. The declaration, after alleging that the companies were amalgamated, that the line took the course of the Direct Northern, without a branch to Stamford, and that the period of three months had elapsed, concluded with laying as a breach the non-payment of the 6,000*l.* The defendants pleaded, that no act of parliament, authorizing the Direct Northern to make the intended line, was passed within six calendar months, and that the defendants gave the plaintiff notice that they were desirous to put an end to the agreement, and that no part of the line had passed through the plaintiff's estate, or that it had been injured under the act: *Held*, on general demurrer, that the plea was a good answer to the action. *Earl of Lindsey v. Capper*, 1 Exch. R. 579.

See Declaration, 2.

REJOINING GRATIS.

1. Rejoining gratis only means rejoining without a rule to rejoin, and a defendant has still

four days' time within which to rejoin. *Winterbottom v. Lees*, 5 D. & L. 744.

2. The plaintiff, on the last day for entering the cause for the assizes, being also the last day within which the defendant had to rejoin, inserted a rejoinder for the defendant, made up the record, and entered the cause for trial. Subsequently, on the same evening, but after the office for entering the record was shut, the defendant delivered a rejoinder differing slightly in form, although in substance the same as that which the plaintiff had inserted for him. The cause was tried, the defendant not attending, and a verdict given for the plaintiff. The Court set aside the record and trial. *Winterbottom v. Lees*, 5 D. & L. 744.

REPLICATION.

1. *De injuriâ*.—*Excusing non-payment*.—*Argumentative denial*.—In an action by indorsee against acceptor, defendant pleaded that the bill was accepted for the accommodation of the drawer, and on the terms that, if he should negotiate it, the holder should deliver it to the drawer before or when it became due, to enable him to take it up; and that the holder should not retain it after it became due: averment that the drawer indorsed it to the plaintiff, who received it on those terms.

Replication, de injuriâ.

Held, on special demurrer, that the replication was correct, inasmuch as the plea admitted that some interest in the bill was transferred to the plaintiff, and therefore did not amount to an argumentative denial of the indorsement, but only to an excuse for not paying the bill to the plaintiff, though admitted to be holder, and *prima facie* entitled to sue. *Robinson v. Little*, 9 Q. B. 602.

Case cited in the judgment: *Herbert v. Sayer*, 5 Q. B. 965.

2. To a count in *assumpsit* for money paid to the defendant's use, the defendant pleaded that the money was paid for differences on time bargains in the funds, in violation of the stat. 7 G. 2, c. 8: *Held*, that *de injuriâ* was a good replication. *Mortimer v. Gell*, 4 C. B. 543.

3. *Admissions*.—In debt, by A. against B. on a bond entered into jointly and severally by B. and C. to A., in the penal sum of 5000*l.*, the condition (set out on oyer), after reciting that C. had been appointed collector of taxes, and that A. had consented to become one of his sureties, was stated to be that B. and C. should keep harmless, and indemnify A. from and against all costs, charges, &c., which he should incur in consequence of his becoming such surety. B. pleaded, that A. had not, at any time since the making of the bond, been in anywise damaged by reason or means of any matter, cause, or thing in the condition mentioned. To this plea A. replied that C. continued collector until, &c.; that during the said time that C. continued such collector, and after the

making of the bond, &c., there came to the hands of C., as such collector, "diverse large sums of money, amounting in the whole to a large sum of money, exceeding 500*l.*; to wit, 2006*l.* 7*s.* 10*d.*;" and that C. did not pay over the same, or any part thereof to the receiver-general; and A., for assigning a breach of the condition of the bond, said, that by reason of such default, he was called upon by the receiver-general, and forced and compelled to pay, and did pay to the receiver-general a large sum of money, to wit, 500*l.*, parcel of the moneys so received by C. as such collector, &c. To this B. rejoined, that A. was not forced or obliged to pay the said sum of money in the replication in that behalf mentioned, or any part thereof, in manner and form as alleged:—

Held, that by this rejoinder, the receipt of 500*l.* by C. was not admitted: and that, in the absence of evidence to show that some money had been received by C., nominal damages only could be assessed on the breach assigned. *Held* also, that the mere production of a judgment signed against A., under a judge's order for 500*l.*, at the suit of the receiver-general, was not evidence of the amount of the damage sustained by A. in consequence of his suretyship. *King v. Norman*, 4 C. B., 884.

Cases cited in the judgment: *Hudson v. Jones*, 1 Salk. 90; *Rex v. Bishop of Chester*, 2 Salk. 560; 1 Ld. Raym., 292.

4. *Heriot Custom*.—Trespass for breaking and entering the plaintiffs' close, and seizing and taking certain goods and chattels to wit, two horses. The defendants pleaded, as to breaking and entering the said close, and seizing and taking parcel of the said goods and chattels, to wit, one of the said horses, a justification of the seizure of that horse, as a heriot due in respect of a customary tenement whereof the plaintiffs' testator died seised. The defendants also pleaded, as to breaking and entering the said close and seizing and taking parcel of the said goods and chattels, to wit, the said other horse, a justification of the seizure of that horse as a heriot due in respect of another customary tenement whereof the plaintiffs' testator died seised. The plaintiffs replied separately to each of the pleas, that the defendants, at the same time, place, and occasion, when they took the horse in the introductory part of that plea mentioned, also seized and took the said other horse (being the residue of the said goods and chattels), under colour and pretence of the said heriot custom, and under an assertion and claim of right to seize and take the same other horse as and for the said heriot custom:—*Held*, on special demurrer, that the replications were good, inasmuch as the seizure of the other horse rendered the defendants trespassers *ab initio* as to the entry, as well as the seizure of the chattels. *Price v. Woodhouse*, 1 Exch. R. 559.

5. *De injuriâ*.—A plea which admits a contract in fact, either express or implied, and seeks to avoid it on the ground of illegality or fraud, is a plea in excuse, and may be traversed by the replication *de injuriâ*.

Therefore, where to an action for work and labour the defendant pleaded that the work was done by the plaintiff, as a broker within the city of London, and that the plaintiff was not licensed to act as a broker,—*Held*, that *de injuriâ* was a good replication. *Benett v. Bull*, 1 Exch. R. 593.

Cases cited in the judgment: *Scott v. Chappelow*, 4 M. & G. 336; 5 Scott, N. R. 148; *Lansdale v. Clarke*, 1 Exch. R. 78.

6. Where to trespass *quare clausum fregit*, the defendant pleads 30 years' enjoyment of a right on the land in which, &c., under the 2 & 3 W. 4, c. 71, s. 1, the plaintiff, if he relies on the fact that during part of those 30 years the land has been held by a tenant for life, or on any other matter of fact not inconsistent with the simple fact of enjoyment, should reply it specially, and not traverse the enjoyment as pleaded. *Pye v. Mumford*, 5 D. & L. 414.

Cases cited in the judgment: *Clayton v. Corby*, 2 Q. B. 813.

7. In an action on the case by a reversioner for widening, &c., a watercourse, the defendant pleaded a right to the watercourse for 20 years, and that he had of right, as often as required, scoured and widened the watercourse. The plaintiff replied traversing the right to the watercourse, as well as to scour and widen: *Held*, on special demurrer, that the replication was not double. *Peter v. Daniel*, 5 D. & L. 501.

Cases cited in the judgment: *Morewood v. Wood*, 4 T. R. 157.

8. Replication to a plea of *plene administraverunt* by executors, that since plea pleaded, assets had come into their hands: *Held* bad on demurrer. *Smith v. Tatcham*, 5 D. & L. 732.

9. The proper course for a plaintiff to pursue, where assets have come into the hands of executors since the commencement of the suit, and they plead *plene administraverunt*, is to sign a judgment of assets *quando acciderunt*, which, if properly entered up, will reach not only whatever assets may thereafter accrue, but also all which remain in the hands of the executors unadministered at the time of the judgment. *Smith v. Tatcham*, 5 D. & L. 732.

Cases cited in the judgment: *Mara v. Quin*, 6 T. R. 1, 10.

10. Where a replication, besides a traverse of matter alleged in the plea, concluding to the contrary, also contained two separate answers to the plea, the Court set aside the replication except as to the traverse, on a summary application. *Tolson v. Bishop of Carlisle*, 5 D. & L. 789.

See *Bond*, post *obit*.

SCI. FA.

Declaration in *sci. fa.* on a judgment recovered against the public officer of a banking company, stated that the defendant "at the time of such judgment was, and from thence hitherto hath been, and still is, a member of the said co-partnership:" *Semble*, that it was bad on special demurrer. *Exdale v. Trustwell*, 5 D. & L. 219.

SEVERAL COUNTS.

1. A declaration contained a count for money paid, together with a count which, in substance, stated that, in consideration that the plaintiff, at the defendant's request, had contracted to sell to a third party, in the plaintiff's name, and on his credit and responsibility, certain shares in a railway company, of which the defendant was the registered holder, the defendant promised the plaintiff to deliver to him all new shares allotted in respect of such shares, and to indemnify him from all loss which might arise by reason of the non-performance of the defendant's promise. It then alleged the non-delivery to the plaintiff of certain new shares allotted to the defendant; and that, by reason thereof, the plaintiff was forced and obliged, and did expend a large sum of money, in order to perform his said contract of sale: *Held*, that the two counts were not in violation of the rule of H. T., 4 Wm. 4, r. 5, which prohibits several counts, unless a distinct subject matter of complaint is intended to be established in respect of each. *Simpson v. Rand*, 1 Exch. R. 688; S. C. 5 D. & L. 389.

2. A declaration contained two counts. The first count was on an agreement by the defendant to take the plaintiff into his service for six months, and if when that period expired there was no just cause shown to the contrary, to enter into another agreement for a further engagement for two years. Breach, that although at the expiration of the said six months, no just cause was shown to the contrary, the defendant refused to enter into a further agreement for two years. The second count stated that the plaintiff had been in the service of the defendant for the space of six calendar months, and the defendant promised to enter into an agreement for two years more. Breach, that the defendant refused to continue him in such service: *Held*, that the two counts were evidently founded on the same agreement, and, therefore, amounted to a breach of r. 5 of the pleading rules of Hil. T., 4 Wm. 4, Pt. II. *Smith v. Thompson*, 5 D. & L. 524.

3. A declaration in case for the infringement of a copyright contained three counts; the first and second, founded on the 5 & 6 Vict., c. 45, and the third on the common law, the copyright being the same in all. The Court compelled the plaintiff to make his election between the first two counts and the last; as the cause of action, contained in the last count, might be given in evidence under either of the former. *Boosey v. Tulkien*, 5 D. & L. 549.

4. The Court refused to allow a plaintiff to retain in his declaration a count in trespass in the ordinary form, for breaking and entering the plaintiff's premises, together with a count under the 2 W. & M. sess. 1, c. 5, s. 5, to recover double the value of goods improperly distrained. *Hoare v. Lee*, 5 D. & L. 765.

SEVERAL MATTERS.

1. In the general form of declaration given by the Companies' Clauses Consolidation Act,

8 & 9 Vict. c. 16, s. 26, in actions for calls on shares, the allegation, "that defendant is the holder of shares," means that he was the holder at the time the call was made.

Therefore, where a declaration in an action for calls stated, that the defendant, at the time of the commencement of the suit, was and still is the holder of shares, and, at the time of the commencement of the suit, was and still is indebted to the plaintiffs for calls on those shares, &c., whereby and by force of the 8 & 9 Vict. c. 16, and the special act, an action accrued, &c., and the defendant pleaded, that, at the time of the commencement of the suit, he was not the holder of the said shares, and also that he was not the holder of the shares at the time the calls were made, the Court, on motion, struck out the latter plea, and amended the declaration and former plea by striking out the words "at the commencement of the suit. *Belfast and County Down Railway Company v. Strange*, 1 Exch. R. 739.

2. The defendant, after appearing by attorney, obtained an order to plead together, her coverture in bar and the Statute of Limitations. She pleaded those pleas accordingly. They were afterwards set aside by a judge at chambers, on the ground that they ought not to have been pleaded together, as coverture ought not to be pleaded after appearance by attorney. The defendants then, without any fresh appearance or order to plead several matters, delivered pleas of coverture to the first two counts, and the Statute of Limitations to the whole declaration. The plaintiff thereupon signed judgment for want of a plea. The judgment having been set aside by judge's order, with costs: *Held*, upon application to rescind that order, that the judgment was improperly signed, as the order to plead several matters did not bind the defendant to plead each plea to the whole declaration, and the order setting aside the former pleas did not make a new rule to plead several matters necessary. *Fryer v. Andrews*, 5 D. and L. 221.

3. *Auditâ querelâ*.—An *auditâ querelâ* is an "action or suit" within the 4 Anne, c. 16, s. 4, and a defendant may plead several matters thereto. *Giles v. Huft*, 1 Exch. R. 701.

Case cited in the judgment; *Nathan v. Giles*, 5 Taunt. 558.

SEVERAL PLEAS.

Broker.—Where a plaintiff had countermanded notice of trial, and it did not appear that he would be delayed in proceeding to trial in consequence of the defendant adding a plea, the Court permitted him to add one, to the effect that the plaintiff was not a broker duly licensed in pursuance of the 6 Anne, c. 16, s. 4. *Fild v. Sawyer*, 5 D. and L. 777.

SHERIFF.

A declaration in an action against W. and S. stated, that the plaintiff was employed by the contractors of certain proposed buildings to cart and convey away the earth dug out of the excavations and sites of the proposed buildings

with the horses and cart of the plaintiff; that an action was depending in the Court of Queen's Bench, wherein *S.*, one of the defendants, was plaintiff, and *T.* defendant, in which action the defendant allowed judgment to go by default, and a writ of *fi. fa.* thereupon issued against the goods of the defendant in that action directed to *W.* the other defendant, then being sheriff of York, to be put in execution by him as such sheriff; yet the last-mentioned defendant, as such sheriff, contriving to injure the plaintiff *by and with the aid, counsel, and assistance of B., the other defendant*, by him wrongfully and maliciously given, seized, took, and carried away, in execution of the said writ, diverse goods and chattels of the plaintiff, to wit, two horses and one cart, under pretence that the same belonged to *T.*, and afterwards sold the goods and chattels as an execution under the writ against the goods of *T.* By means of the premises, and for want of the use of the horses and cart, the plaintiff was unable to carry on his employment and business, and thereby lost great gains, &c.: *Held*, on demurrer, that the declaration showed no cause of action against *S.* *Stockman v. Walker*, 1 Exch. R. 589.

TROVER.

To an action of trover for goods, the defendant pleaded, that the goods in question were deposited with the defendant as a security for a certain debt due to the defendant from the plaintiff, on the terms that the defendant should retain them till the debt should be paid; that the debt had not been paid; and therefore, that the defendant had refused to deliver them up, as he lawfully might: verification: *Held*, on special demurrer, that the plea was bad, as amounting to an argumentative denial of the plaintiff's right of possession, at the time of the alleged conversion. *Dorrington v. Carter*, 1 Exch. R. 566.

Cases cited in the judgment: *Owen v. Knight*, 4 Bing. N. C. 54; 5 Scott, 307.

VARIANCE.

1. *Notice of dishonour of bill.*—In an action by indorsee against indorser of a bill of exchange payable at the London Joint Stock Bank, notice of dishonour was proved, describing the bill as payable at the London and Westminster Bank.

Held, no ground of nonsuit, the notice being accurate in all other respects, and there being no proof that defendant had been misled. *Bromage v. Vaughan*, 9 Q. B., 608.

Cases cited in the judgment: *Stockman v. Parr* 11 M. & W. 209.

2. Where the writ and commencement of the declaration were in debt, and the 1st count in the declaration might be in debt or assumpsit but the 2nd was in assumpsit; the Court set aside the declaration as varying from the process. *Moore v. Foster*, 5 D. & L. 352.

3. *Assumpsit.*—The declaration recited that certain goods had been shipped on board the plaintiff's vessel by *Messrs. B. & Co.*, to be

delivered in this country according to the terms of the bill of lading, to the order of *R. and Co.*, or their assigns, paying freight and 2*l.* 10*s.* per day demurrage over four working days: it averred that *R. and Co.* indorsed and assigned over the bill of lading to the defendants; and that "in consideration of the premises, and that the plaintiff, at the request of the defendants, would deliver unto the defendants as such indorsees and assignees as aforesaid, and would suffer and permit them to take the said cattle bones according to the terms of, and agreeably to, the bill of lading; the defendants then promised the plaintiff to accept and take the said cattle bones on the terms and conditions contained in the said bill of lading," and to clear the vessel within four days, or pay 2*l.* 10*s.* for each day beyond for demurrage. That although plaintiff was ready and willing to deliver, and permit the defendants to take, and defendants did take the cattle bones; yet the defendants did not discharge the vessel within four working days, but detained her for three days beyond, whereby the plaintiff was put to great costs and charges, &c., and a large sum of money became due to the plaintiff by way of demurrage, which the defendants had not paid, &c., to the plaintiff's damage, &c.

At the trial, the plaintiff proved all the facts stated in the declaration, except an express promise by the defendants: *Held*, that the facts proved warranted the jury in finding that the defendants did promise, and, therefore, that the evidence supported the declaration.

Held, on motion in arrest of judgment, that the declaration disclosed a sufficient consideration. *Stindt v. Roberts*, 5 D. & L. 460.

4. To a declaration in trover for hops, the defendants pleaded, that just before, &c., and until, &c., *M. & Co.* were possessed of the hops as of their own property, and casually lost them, and that immediately thereupon they came, by finding, into the possession of *E.*, who immediately thereupon sold them to the plaintiff, whereupon, and immediately before the time, &c., the defendants retaken them, as servants of *M. & Co.*, and for their use. Replication *de injuriâ*. *Held*, upon the issue so raised, that the defendants could succeed only by proving possession in *M. & Co.* at the time of the alleged conversion; and, therefore, that evidence was admissible on the part of the plaintiff, to show that *M. & Co.* had sold the hops to the person under whom he claimed.

To the same declaration a similar plea was pleaded, only alleging a different person in addition to *E.*, through whose hands the hops were alleged to have passed, but not alleging the possession of *M. & Co.* down to the time of the plaintiff's conversion: *Held*, that similar evidence in answer to this plea was admissible to show that *M. & Co.* had sold the hops to the person under whom the plaintiff claimed, as this plea also must be construed as alleging a continuing possession in *M. & Co.* at the time of the conversion complained of. *Bye v. Howell*, 5 D. & L. 536.

VENUE.

1. In an action on a banker's cheque, the venue cannot be changed on the common affidavit. *Webb v. Edwards*, 5 D. & L. 478.

Case cited in the judgment: *Martin v. Daws*, 1 D. & L. 279.

2. Until issue is joined, the Court will not grant a rule for changing the venue, on the ground that the witnesses on both sides in the cause reside in a county different from that in which the plaintiff has laid the venue. *Hodge v. Churchyard*, 5 D. & L. 514.

3. The Court refused to change the venue after issue joined and notice of trial given, where it was not shown in the affidavit in support of the application that the change would not be inconvenient to the plaintiff, or in what respect it would be productive of convenience to the defendant. *Hans v. Pawlett*, 5 D. & L. 780.

WAGER.

Notwithstanding the provisions of the 8 & 9 Vict. c. 109, s. 18, a sum deposited with a shareholder to abide the event of a trotting match, may be recovered by the depositor, who has repudiated the wager and demanded his money before the match is decided; and *semble*, that in order to raise the objection on the section, it ought to be pleaded specially. *Varney v. Hickman*, 5 D. & L. 364.

WORK AND LABOUR.

A claim for a month's wages by a menial servant on dismissal without warning, and without cause, cannot be recovered under the common *indebitatus* count for work and labour. *Fewings v. Tindal*, 5 D. & L. 196.

Case cited in the judgment: *Archard v. Horner*, 3 C. & P. 349.

PRACTICE.

AFFIDAVIT.

1. "H. B., clerk to the above-named defendant," is not a sufficient description of a deponent in an affidavit. *Ekton v. Martindale*, 5 D. & L. 248.

2. The rule as to the exclusion of affidavits in the jurats of which there are interlineations, applies to affidavits sworn in India. *In re Page*, 5 D. & L. 476.

3. An affidavit sworn before a commissioner, omitting the words "before me" in the jurat, is bad. *Graham v. Ingleby*, 5 D. & L. 737; 8 C., 1 Exch. Rep. 651.

Cases cited in the judgment: *Reg. v. Inhabitants of Bloxham*, 5 Q. B., 528; 2 D. & L. 168; *Reg. v. Inhabitants of Northbury*, 6 Q. B. 534, n.

4. *Form of jurat*.—An affidavit with a jurat signed, "A. B., a commissioner, &c.," is sufficient. *Menden v. Duke of Brunswick*, 4 C. B. 321.

5. *Issuiking*.—A writ issued in an action intended to be brought against one John G., by mistake described him as Henry G. and was served upon Henry G. The mistake in the

service being discovered, notice was given to Henry G. not to appear. A copy of a pluries summons was some months afterwards left at the residence of John G., the real defendant, still describing him as Henry G. The defendant gave this copy to Henry G., in whose name one Lewis, an attorney, entered an appearance, demanded a declaration, and afterwards (with full knowledge that the appearance was no appearance in the cause,) signed judgment of *non pros.*, for want of a declaration.—Upon a motion to set aside the appearance, the affidavit was intituled *In the matter of the attorney, in a cause between A. B. and C. D., plaintiffs, and John G., sued by the name of Henry G., defendants.* Held, that it was properly intituled. *Belcher v. Goodered*, 4 C. B., 472.

Case cited in the judgment: *Jones v. Eldridge*, 4 M. & G. 266; 4 Scott, N. R. 731; overruling *Borthwick v. Ravenscroft*, 5 M. & W. 31; 7 Dowl. P. C. 393.

AMENDMENT.

1. *Allocatur*.—*Tender of full amount*.—Where an order for leave to amend is made upon payment of costs, and the costs are taxed and ascertained by the Master's allocatur, the party, in order to avail himself of the leave to amend, must tender the full amount of the allocatur, and not a less sum; although he may be prepared to show that a mistake has been made in allowing certain items. *Levy v. Drew*, 5 D. & L. 307.

2. *Interlocutory judgment*.—*Irregularity*.—Where, after demurrer, an order was made, that, upon payment of costs, the plaintiff should be at liberty to amend his declaration; and the plaintiff did amend, and delivered his amended declaration; but did not tender the amount of the costs as ascertained by the Master's allocatur: Held, that an interlocutory judgment, signed by him for want of a plea, was irregular. *Levy v. Drew*, 5 D. & L. 307.

3. *Payment of costs*.—Where an order for leave to amend is "upon payment of costs," the payment of those costs is a condition precedent. *Levy v. Drew*, 5 D. & L. 307.

4. *Statute of Limitations*.—The Court refused to alter the date of a writ to a day different from that on which it issued, so as to comply with the provisions of the 2 Wm. 4, c. 39, s. 10, in order to prevent the operation of the Statute of Limitations; although it had been issued three days before the expiration of the six years, from the accruer of the cause of action: but allowed a writ, not tendered in due time in continuation of process, to be entered of record of the day, on which it was tendered. *Campbell v. Smart*, 5 D. & L. 335.

5. *By inserting name of third executor*.—In an action of assumpsit against two executors, the plaintiff discovered, after plea by the two, that there was a third executor. The Court refused permission to amend the writ and declaration by inserting the name of the third executor as co-defendant; although a *frank action* would be barred by the Statute of Limitations. *Goodchild v. London*, 5 D. & L., 383.

Cases cited in the judgment: *Christie v. Bell*, 16 M. & W. 669; 4 D. & L. 690; *Brown v. Fullerton*, 2 D. & L. 251; 13 M. & W. 556.
See *Writ of Summons*.

APPEARANCE.

Reversing outlawry.—A party may appear by attorney to reverse an outlawry for error in fact.

The rule in this respect is the same in the Exchequer as it is in the other courts. *Craig v. Levy*, 1 Exch. Rep. 570.

APPEAL.

To the Court, where judge at chambers declines to make order.—A count for goods sold and delivered was not allowed together with a count upon a special contract apparently for the price of the same goods, unless the plaintiff could satisfy a judge at chambers, that he *bond fide* intended to establish a distinct subject matter of complaint in respect of each count; *dissentiente, Creswell, J.*, as to the application of the rule. *Grissell v. James*, 4 C. B. 768.

ARBITRATION.

Application to set aside award.—In a cause which had been referred to arbitration by an order of *Nisi Prius*, the arbitrator made an award in favour of the defendant, who thereupon signed judgment. The plaintiff obtained a rule to set aside the award, notice of which was served upon the defendant. The defendant afterwards, and before the argument of the plaintiff's rule, obtained a judge's order to stay all further proceedings until the plaintiff should have given security for costs: *Held*, that the Court could not entertain the application for setting aside the award whilst this order remained in force. *Badham v. Badham*, 1 Exch. R. 824.

ARREST.

On an application to the Court to rescind a judge's order for arrest under 1 & 2 Vict. c. 110, s. 3, it is competent to the defendant to dispute, upon affidavit, the existence of a cause of action. *Pegler v. Hislop*, 5 D. & L. 223.

ATTACHMENT.

Officer of Palace Court.—Goods in possession of sheriff.—The sheriff having seized goods under process out of this Court, an officer of the Palace Court, during the temporary absence of the sheriff's officer (whose son remained on the premises with the warrant), took the goods under process of that Court. This Court refused to interfere, either by granting an attachment against the officer of the Palace Court, or by ordering him to refund a sum paid to him in order to obtain the release of the goods. *White v. Chapple*, 4 C. B. 628.

CHARGING IN EXECUTION.

It is no cause to show against a motion to charge a defendant in execution, who has been brought up on a writ of *habeas corpus ad subjiciendum*, that the warrant of attorney on which the judgment has been signed, was

given without consideration, and the judgment signed in breach of good faith. Such facts are the proper grounds of a substantive motion to set aside the warrant of attorney, judgment, and subsequent proceedings, and to discharge the defendant out of custody.

The Court will not, therefore, postpone the motion to charge the defendant in execution, until the other rule comes on to be discussed. *Cooke v. Wright*, 5 D. & L. 274.

COGNOVIT.

1. After writ issued, and before appearance entered, the defendant gave a cognovit in the common form. Upwards of seven years afterwards, the plaintiff entered an appearance for the defendant in the action, and signed judgment on the cognovit: *Held*, that he might properly do so without giving a Term's notice, or applying for leave to the Court or a judge. *Thompson v. Langridge*, 5 D. & L. 213.

2. A party coming to the Court to rescind an order of a judge, and succeeding, will not be allowed to make a subsequent separate application to have the costs repaid, which he has paid under the judge's order. *Thompson v. Langridge*, 5 D. & L. 213.

CONSENT RULE.

Semble, that where a rule has the force of a judgment under the 1 & 2 Vict. c. 110, s. 18, it is not necessary that a rule should be served calling on the party in default to show cause why he should not pay the amount mentioned in the rule. *Doe d. Harrison v. Hampson*, 5 D. & L. 484.

Cases cited in the judgment: *Jones v. Williams*, 8 M. & W. 349; *Doe v. Amey*, 8 M. & W. 563; *Neale v. Postlethwaite*, 1 Q. B. 245; *Hodson v. Patterson*, 4 M. & G. 333.

DISTRINGAS.

1. Upon a motion for a distringas, an affidavit stating that the deponent "explained the nature and object of his visit," is insufficient. *Dubois v. Lowther*, 4 C. B. 228.

2. The defendant was a lunatic, and was confined in a lunatic asylum; and the party, going there to serve him with a writ of summons, was told, on several occasions, by the proprietor of the asylum, and by his wife and daughter, that it was against the rules of the establishment that the lunatic should be seen. The proper number of calls were made; and, on the last occasion, a copy of the writ left with the daughter of the proprietor. The Court granted a distringas to compel an appearance, directing the writ to be served on the wife of the lunatic, or at his last place of residence, as well as at the asylum. *Mutter v. Foulkes*, 5 D. & L. 557.

EJECTMENT.

1. Notice to quit.—A lease for years not warranted either at Common Law, or by 32 Henry 8, c. 28, was made by A., tenant in tail, to B. After A.'s death, C., the next entailee in remainder, demanded the arrears of rent accruing in C.'s time. After some negotiation, B. refused to pay the arrears to C.,

alleging that *D.*, and not *C.*, was entitled to the estate tail:—*Held*, that no tenancy was created between *C.* and *B.*, and that *C.* might maintain ejectment against *B.*, without notice to quit or demand of possession,—that the setting up of the title of *D.* amounted to a disclaimer of the title of *C.*; and that, for the purposes of the action of ejectment, the entry confessed in the consent rule was sufficient to determine the lawful possession of *B.* *Doe d. Phillips v. Rollings*, 4 C. B. 188.

Cases cited in the judgment; *Oates d. Wigfall v. Brydon*, 3 Burr. 1895; *Jenkins d. Harris v. Prichard*, 2 Wils. 45; *Goodright d. Hare v. Cator*, 2 Doug. 477; *Little v. Heaton*, 1 Salk. 259; 2 Lord Raym. 750; *Doe d. Duckett v. Watts*, 9 East, 17; *Duppa v. Mayo*, 1 Wm. Saund. 287, n. (16.)

2. *Service of declaration and notice on mother-in-law of tenant*.—A declaration and notice in ejectment were left with the mother-in-law of the tenant, (being herself tenant of part of the premises,) on the day before the term, and the wife of the tenant on the same day acknowledged that she had received it, and it was then explained to her; and it did not appear that the acknowledgment took place on the premises: *Held*, insufficient even for a rule nisi. *Doe d. Royle v. Roe*, 4 C. B. 256.

Case cited in the judgment: *Doe d. Briggs v. Roe*, 3 Tyrwh. 211; 2 C. & J. 202; 1 Dowl. P. C. 312.

3. *Service of declaration and notice*.—A declaration and notice in ejectment were left with, and the notice was read and explained to, the mother-in-law of *A.*, the tenant, (herself tenant of part of the premises,) the day before the term; the wife of *A.*, on the same day, upon the premises, acknowledged that she had received it, and it was then explained to her; and *A.*, on a subsequent day, admitted that the declaration came to his hands on the day on which it was served: *Held*, good service. *Doe d. Royle v. Roe*, 4 C. B. 258.

4. *Form of affidavit upon motion for judgment*.—*Quære*, whether upon a motion for judgment against the casual ejector, under the 4 Geo. 2, c. 28, s. 2, an affidavit stating that an amount exceeding half-a-year's rent was in arrear, and that there was "no sufficient distress to be found upon the premises, countervailing the said arrears of rent then due," is sufficient: or whether the affidavit should state that the property upon the premises was insufficient to countervail half-a-year's rent. Where judgment had been obtained upon an affidavit which the party was apprehensive might be held to be defective in this respect, the Court allowed such judgment to be superseded, and another judgment to be signed, upon an amended affidavit.

Seemle, that no special ground for setting aside the first judgment was necessary. *Doe d. Gretton v. Roe*, 4 C. B. 576.

5. *Undertaking in the consent rule is not enforceable against representatives*.—The undertakings contained in the common consent

rule are *personal*, and binding only to the extent of creating a liability to attachment.

They cannot be enforced by the representatives of a deceased party. *Doe d. Harrison v. Hampson*, 4 C. B. 745.

Cases cited in the judgment: *Thrustout v. Bedwell*, 2 Wils. 7; *Doe v. Ford*, 2 J. P. Smith, 407; *Doe d. Pain v. Grundy*, 1 B. & C. 284; 2 D. & R. 437.

6. In an ejectment under the 4 Geo. 2, c. 28, where the premises are kept locked, and access refused by the parties in possession, so that it cannot be ascertained whether there is a sufficient distress thereon or not; the affidavit stating the facts is sufficiently positive, if it state a *belief* only, that there is no sufficient distress on the premises. *Doe d. Cox v. Roe*, 5 D. & L. 272.

7. To a rule calling on the tenant in possession to show cause why service of a declaration and notice in ejectment on his daughter, on the premises, should not be deemed good service, it is no answer that the notice was not read over or explained to the party served, and that the service took place at 10 o'clock of the night previously to the first day of Term; unless it is sworn that the tenant was not acquainted with the nature and meaning of the proceedings before the 1st day of Term. *Doe d. Kenrick v. Roe*, 5 D. & L. 578.

Case cited in the judgment: *Doe d. Downes v. Roe*, 4 Dowl. 565.

ELECTION.

One of several actions against co-contractors.—The plaintiff having brought 28 separate actions against as many railway directors, in January, 1846, in the following month delivered 28 separate declarations, to which defendants pleaded separately in abatement the pendency of another action; in one action a defendant withdrew his plea and pleaded in bar, and upon that plea issue was joined, and the cause was referred to arbitration at the sittings after the following Trinity Term, all the parties agreeing to be bound by the award, and the plaintiff subsequently had an award in his favour. In Trinity Term, the plaintiff had judgment on demurrer to the plea in abatement in one action, whereupon the plaintiff demanded joinders in demurrer in the 26 others, but offered to consolidate. The defendants having obtained a rule in Trinity Term, calling on the plaintiff to elect upon which to proceed, and to be relieved from costs incurred since the time of pleading in abatement, and in the meantime to stay proceedings. The Court *held*, that the rule ought to be discharged, but suggested that it should be disposed of by consent, as if it had been obtained *after* the award was made, in which case the plaintiff would be entitled to his debt and costs in pursuance of the award, and of costs incurred since the time of pleading in abatement, with costs of all the writs, and that all proceedings would be stayed, except in the cause referred. *Henry v. Nash*, 1 Exch. R. 826.

INQUIRY.

See *Writ of Inquiry*.

INSPECTION OF DOCUMENTS.

1. In an action against the proprietors of a newspaper for the breach of a contract to employ the plaintiff as sub-editor, the defendants justified the dismissal of the plaintiff, on the ground of his having, from improper motives, lent himself to the insertion of a garbled report of proceedings in a Court of justice.

The Court refused to allow the plaintiff to inspect, and take copies of, the original report, and of the alleged garbled statement,—he having no recognized legal interest therein. *Powell v. Bradbury*, 4 C. B. 541.

Cases cited in the judgment: *Ratcliffe v. Blunsby*, 3 Bing. 148; 10 J. B. Moore, 523; *Rowe v. Howden*, 4 Bing. 539, a.; 1 M. & P. 334.

3. Where an action was brought by an allottee in a railway company, for the recovery of his deposit, against a member of the managing committee, and it appeared by affidavit that the subscribers' agreement and parliamentary contract had been signed by the plaintiff and defendant, and was in the hands of the solicitor to the company and to the defendant; and that an inspection and copy of those documents was necessary for the purpose of proving the plaintiff's case: *Held*, that the plaintiff had a right to such inspection and copy. *Loy v. Barlow*, 1 Exch. R. 800.

Case cited in the judgment; *Steadman v. Arden*, 15 M. & W. 587.

INSPECTION OF COURT ROLLS.

1. On application for a mandamus to inspect the Court rolls of a manor, to a copyhold in which the appellant claims to be entitled, the affidavit in support of the rule should either state positively that the applicant is the party entitled thereto, or should set out the title on which he rests his claim, so that the Court may judge of its reasonableness. *Ex parte Cooke*, 5 D. & L. 413.

INTERLOCUTORY JUDGMENT.

See *Amendment*, 2.

JUDGMENT.

In cases in which a rule of Court for the payment of money, has the effect of a judgment, under 1 & 2 Vict. c. 110, s. 18, a rule nisi,—calling upon the parties to show cause why the amount should not be paid,—is unnecessary. *Doe d. Harrison v. Hampson*, 4 C. B. 745.

Cases cited in the judgment: *Jones v. Williams*, 8 M. & W. 349; *Doe d. Amey*, 8 M. & W. 565; *Hodgson v. Paterson*, 4 M. & G. 535; 5 Scott, N. R. 76.

JUDGMENT AS IN CASE OF NONSUIT.

1. *Sufficiency of excuse*.—In answer to a rule for judgment as in case of a nonsuit in a country cause for allowing two sittings to elapse without proceeding to trial, after notice,—the plaintiff alleged for excuse the uncertainty of the law as to the liability of railway committeemen, and that he was desirous of awaiting the determination of a similar case, (the particulars; of which, however, were not given,) pending in error from the Court of Exchequer.

The Court, holding the excuse to be *per se* insufficient, nevertheless discharged the rule upon a peremptory undertaking, on the ground that the defendants had been tardy in their application. *Edwards v. Ward*, 4 C. B. 315.

2. On a motion for judgment as in case of nonsuit, the affidavit stated "that no notice of trial had been given in this cause," without negating that a trial had in point of fact been had: *Held*, sufficient. *Woolmer v. Collins*, 5 D. & L. 306.

3. Where, in an action against four persons, issue was joined as to two, but the third died after declaration, and before plea, and the fourth died after plea and before issue joined; the Court *held*, that judgment as in case of a nonsuit could not be obtained by the survivor without entering a suggestion on the record of the death of the deceased defendants. *Pinkus v. Sturch*, 5 D. & L. 515.

BUSINESS OF THE COURTS.

CHANCERY SITTINGS.

Master of the Rolls.

Michaelmas Term, 1849.

AT THE ROLLS.

Friday . . .	Nov. 2	Motions.
Saturday . . .	3	Petitions in General Paper.
Monday . . .	5	Pleas, Demurrers, Causes.
Tuesday . . .	6	Further Directions, and
Wednesday . . .	7	Exceptions.
Thursday . . .	8	Motions.
Friday . . .	9	
Saturday . . .	10	Pleas, Demurrers, Causes.
Monday . . .	12	Further Directions, and
Tuesday . . .	13	Exceptions.
Wednesday . . .	14	
Thursday . . .	15	Motions.

Friday . . .	16	Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Saturday . . .	17	
Monday . . .	19	
Tuesday . . .	20	
Wednesday . . .	21	
Thursday . . .	22	Motions.

Friday . . .	23	Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Saturday . . .	24	
Monday . . .	26	Petitions in General Paper.
		Motions.

Short Causes, Consent Causes, and Unopposed Petitions, every Saturday at the sitting of the Court.

NOTICE.—Consent Petitions must be presented, and copies left with the secretary, on or before the Thursday preceding the Saturday on which it is intended they should be heard.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE

SATURDAY, OCTOBER 27, 1849.

ADMINISTRATION OF THE NEW BANKRUPT ACT.

PRACTICAL DIFFICULTIES.

THE precipitancy with which the Bankrupt Law Consolidation Act was hurried through its later stages in the House of Commons, and the extensive alterations made in it at the eleventh hour, already begin to produce the fruit that might have been expected, disappointment, uncertainty, and embarrassment. The act has scarcely been a fortnight in operation, and the practitioner in Bankruptcy already finds his path beset with doubt and difficulty, which must necessarily be succeeded by anxious and unprofitable litigation. If it were possible to regard with any other feeling but that of sober sadness, a measure the effect of which is to unsettle the legal relations between debtor and creditor, we might derive amusement from observing, the sensitive eagerness with which those who were supposed to be concerned in fashioning and concocting the bill during its progress through either House of Parliament, are now endeavouring to shift from their own shoulders the burthen of responsibility. The measure ushered in with such a flourish of trumpets, which was to "elevate the tone of commercial morality," and confer incalculable benefits on the trading community,—and which was, moreover, declared to be so perfect in all its details, that those who in the month of July last, suggested it might advantageously stand over for another Session, were denounced as the senseless opponents of all reform or the interested advocates of vicious abuses—is now found to be of such equivocal worth that no one cares to own it! Lord Brougham, the Attorney-General, the Bankrupt Commissioners, and the City Committee of Bankers and Traders, are equally desirous to disclaim.

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the paternity. It is "Nobody's" act, and that convenient creation has fallen into some very serious blunders in framing it.

We propose for the present to content ourselves with directing attention to a few of the difficulties which have already actually presented themselves in practice, with regard to the effect and construction of the new act;—only promising, that the instances now referred to have been selected as they occurred, and are stated without much regard to their relative importance.

Our readers are aware, that under the provisions of the act of the last Session, a petition for adjudication is substituted for a fiat, and the 90th section of the act directs that every such petition "shall be filed and prosecuted in the Court *within the district* of which such trader shall have *resided or carried on business for six months next immediately preceding* the time of filing such petition," except upon special order. The act also prescribes the form of petition, which is to be verified by the affidavit of the petitioner, whether the petition be presented by a creditor or by the bankrupt himself. The petition, in either case, contains an express allegation of the intended bankrupt "*having resided (or carried on business as the case may be) for six calendar months next immediately preceding the date of this petition, within the district of this honourable Court; that is to say, at, &c., naming the place.*" If a petition be filed in the prescribed form, the senior Commissioner may, if he deem it expedient, order such petition "to be prosecuted in any district with or without reference to the district in which the trader shall have resided or carried on business;" but the petition is the foundation of the Commissioner's authority, and no such petition can be verified, unless the intended bankrupt shall have resided or carried on business for the preceding six months,

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within the district in which the petition is filed. Now there are eight districts, to which the allegation as to business or residence may apply,* and nothing is more common than to find an insolvent trader who has not resided or carried on business, *wholly* within any one district for the last six months. A trader who finds himself in inextricable embarrassment, and is afraid or ashamed to face his creditors, frequently shuts up his office or his shop, and passes his time between Brighton and Cheltenham, or perhaps prefers Dieppe or Boulogne. His creditors may be very desirous to make such a trader a bankrupt, but which of them can undertake to swear that the intended bankrupt has either resided or carried on business in any particular district for six months "immediately preceding?" Again, it is notorious, that a class of traders,—not always the most solid or respectable,—live by going about from town to town with a large stock of goods, which are exposed and sold in shops and rooms, hired by the week or the month. Such persons can never be truly said to reside or carry on business for six months in any place. However desirable it may be that the estates of such persons should be administered in bankruptcy, the enactments to which we have referred seem to preclude it.

It cannot be supposed that this was intended, and why such a restrictive provision was introduced, it is not easy to conceive, as no complaints were heard of any evils arising out of the practice of issuing fiats as it existed previously to the passing of the 12 & 13 Vict. c. 106. Under the system the present act was intended to amend, the fiat was issued to the district in which it was stated the bankrupt had carried on business, and if the creditors acquiesced was prosecuted in such district; but upon competition between creditors, the Court would order the fiat to issue to one district or another as it was deemed most convenient and beneficial.^b The unmeaning alteration now made in the law, affords an additional opportunity to a fraudulent debtor to defeat the just claims of his creditors, and imposes an unnecessary difficulty upon an

honest debtor who is disposed to accede to the wishes of those with whom he is unable to fulfil his pecuniary engagements.

Amongst the inquisitorial powers with which the Court of Bankruptcy is invested, that most obviously necessary is the power to examine the bankrupt and his wife, and to compel them to answer all questions put to them touching the estate of the former, or any concealment of his goods or property. That power has existed for many years, and has been exercised with sufficient judgment and discretion, not to have been frequently the subject of animadversion. The authority, no doubt, is meant to be continued by the present act, but the section which gives the Court the power to enforce its authority by committal is so carelessly framed, as to create a serious difficulty. By the act 8 & 9 Vict. c. 48, bankrupts and their wives,—of all persons in the world,—were especially exempted from being examined under the obligation of an oath; and a form of declaration to be made and signed by the bankrupt was substituted. This somewhat unsatisfactory arrangement is adopted in the new act, and power is expressly given to the Court to examine the bankrupt and his wife, after he or she "shall have made and signed the declaration." [ss. 117, 118, and 246.] As the making and signing the declaration is a condition precedent to taking the examination, the authority of the Commissioner to commit the bankrupt or his wife, who should refuse to comply with this preliminary, ought to be free from all doubt. Accordingly the framer of the act, (by section 260,) proposed to provide, that a bankrupt or his wife refusing to make and sign the declaration, should be subject to the like power of committal, as a person refusing to be sworn, or refusing to answer, or not fully answering, or refusing to sign his or her examination, or to produce books, &c.; but in defining the extent of the power of committal in each particular instance, it seems to have been forgotten that the bankrupt and his wife are to be examined on declaration and not on oath, for the Court is empowered by warrant, to commit such bankrupt, or other person, to prison, to remain "without bail, until he shall submit himself to such Court to be sworn, and full answers make," &c. The 246th section provides that the bankrupt and his wife are to be examined upon declaration, "without being sworn on oath," and the authority to commit is limited by the words "until he shall submit himself to

[*] The districts as regulated by the order in council gazetted Nov. 4, 1842, still exist, and are known as the, London, Birmingham, Bristol, Exeter, Leeds, Liverpool, Manchester, and Newcastle-upon-Tyne districts. By section 9, of the new act, they may be altered by order in council.

^b *Ex parte Bowdler*, 1 Rose, 48. 1 Archb. Bank. Prac. p. 95.

be sworn," an inconsistency which would render it extremely difficult to frame a valid warrant to commit a bankrupt or his wife who refused to make or sign the declaration. This defect becomes apparent upon a perusal of the section, which is as follows :

"If any bankrupt, or the wife of any bankrupt, shall refuse to make and sign the declaration contained in the schedule W. to this act annexed, or if any other person shall refuse to be sworn, or shall refuse to answer any lawful question put by the Court, or shall not fully answer any such question to the satisfaction of the Court, or shall refuse to sign and subscribe his examination when reduced into writing (not having any lawful objection allowed by the Court); or shall not produce any books, papers, deeds, and writings, or other documents in his custody or power relating to any of the matters under inquiry, which such bankrupt, wife of bankrupt, or person is required by the Court to produce, and to the production of which he shall not state any objection allowed by the Court, it shall be lawful for the Court, by warrant, to commit such bankrupt, wife of bankrupt, or other person, in London to the Queen's Prison, or in the country to such prison as such Court shall think fit, (as the case may be, in London, or in any district in the country,) there to remain without bail until he shall submit himself to such Court to be sworn, and full answers make, to the satisfaction of such Court, to all such lawful questions as shall be put by the Court, and sign and subscribe such examination, and produce such books, papers, deeds, writings, and other documents in his custody or power, to the production of which no such objection as aforesaid has been allowed."

The division of the act relating to *offences against the Law of Bankruptcy*, (which division comprehends no less than 24 sections) has given rise to another question, of still greater importance, namely, whether the act is retrospective in its operation as regards any, and if any, which of the offences enumerated in the sections included in this division? The division commences in these words : "And with respect to offences against the law relating to bankruptcy and other matters in this act, be it enacted:" and then follows an enumeration of various offences to which specific penalties are attached, some of such offences being described by a mere re-enactment of former statutory provisions, whilst other acts or omissions are now made offences for the first time.

The enumeration of offences is followed in the same division of the act, by a series of provisions altogether novel in principle and design. The assignees of a bankrupt and all creditors who have proved, are to be deemed judgment creditors, and a certificate thereof is to have the effect of a judgment

of the Superior Courts; and the assignees or such creditors may issue execution against the body of any bankrupt, whose certificate is suspended or refused by the Court, or to whom the Court has refused protection. Then follows the section (259,) the proviso added to which has created the doubts referred to : the section is in these words :—

"If any bankrupt shall be taken in execution after the refusal of protection, or after the refusal or suspension of his certificate, he shall not be discharged from such execution, until he shall have been in prison for the full period of one year, except by order of the Court. Provided always, that this enactment shall not take effect until after the expiration of six months from the commencement of this act, and then only against such persons as shall have been adjudged bankrupt under this act, and for offences committed after the commencement of this act."

The question is, whether the proviso suspending the operation of this enactment, relates to all the preceding sections contained in the division, preceded by the words, "be it enacted," or whether it may be extended and confined to the sections immediately preceding, giving assignees and creditors who have proved, the power of issuing execution against an unprotected or uncertified bankrupt, or whether its operation is limited to the provisions in the previous part of the section? Whichever construction of the act is adopted, must produce inconvenience and injustice. If it be held that the words "this enactment," in the proviso, refers back to the words "be it enacted" immediately preceding the 251st section, the Court of Bankruptcy is shorn of all effectual authority, and the Bankrupt Law is virtually suspended, for six months from the 11th October last. Upon this construction of the act, the penal clauses re-enacted from the 5 & 6 Vict. c. 122, as to the bankrupt not surrendering, or delivering up books, or removing, concealing, or embezzling his estate, nay the section which imposes the penalties of wilful and corrupt perjury upon bankrupts and others giving false evidence,—can have no operation until the 11th of April next, and then only as regards offences committed subsequent to the 11th Oct. last.

On the other hand, suppose it could be assumed that the words "be it enacted" were prefixed to the 259th section, and that the proviso is held to relate only to the enacting part of that section, and that effect is to be given to the words in the proviso, "*offences committed after the commencement of this act,*" by holding that it

is only as to such offences, and after a lapse of six months from the 11th October last, the highly penal provision attaches which detains a bankrupt in prison "for the full period of one year, except by order of the Court," still the difficulty remains that a bankrupt will be subjected to execution against his person, at the instance of any creditor who has proved, in consequence of the commission of acts, first made offences by this statute, and committed before the statute existed. For example, not keeping proper books of account, or keeping such books imperfectly, is made for the first time an offence by this act. The Court is bound to refuse or suspend the certificate of a trader guilty of such offence, and under the construction last suggested, a creditor who has proved may take the bankrupt in execution, and keep him until he pays the debt or is discharged by the Insolvent Court, thus punishing the bankrupt by an *ex post facto* law. The more convenient interpretation of the proviso, no doubt, would be, that it is applicable to all the new powers given to the Court and the creditors, and does not extend to offences existing before the passing of this statute, and which were created by acts now repealed, but we apprehend such a reading would not be consistent with any of the rules heretofore adopted in the construction of statutes.

As above intimated, the question as to the effect of the proviso to the 259th section, has already been brought before the Court of Bankruptcy, but there can hardly be said to have been any decision on it, for although the learned Commissioner (Shepherd) before whom the question was first mooted, decided that the section entitling creditors to demand a certificate of proof of debt, was not retrospective, and that the Court could not grant such a certificate until six months after the commencement of the act, he publicly intimated on the following day that, upon further consideration, he doubted the soundness of the view he had hastily taken, and begged it might not be considered he had formed any decided opinion, until he had an opportunity of discussing the matter with his brother Commissioners.

On nearly all the questions of importance arising under the new act, which have been hitherto brought before them, the Commissioners have properly and judiciously taken time to consider, so that none of the questions suggested can yet be said to have been judicially determined.

NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

OUR readers will have observed that we have from week to week, during the Long Vacation, now drawing to a close, laid before them every statute of the last Session of Parliament which could be deemed of importance to the practitioner. A few acts of a general nature may be briefly given in the next volume; but we trust that no change in the law effected during the past Session has remained unnoticed. Wherever their importance required it, we have given the acts *in extenso*; at other times in an abridged form according to their utility; and all have received such notes and comments as appeared immediately called for. Other and farther annotations will be hereafter added when the acts come into practical operation.

Some of our contemporaries deem it sufficient to give a short analysis only of some of the most important statutes, reserving them for separate works by barristers; but we feel bound to comprise in the pages of the *Legal Observer* every statute that bears upon the law or the practice of the Courts.

PUBLIC GENERAL ACTS.

With references to the pages where the Acts relating to the Law have been printed in "The Legal Observer."

1. An Act to consolidate the Boards of Excise and Stamps and Taxes into One Board of Commissioners of Inland Revenue, and to make Provision for the Collection of such Revenue.
2. An Act to continue, until the 1st day of September, 1849, an Act of the last Session, for empowering the Lord Lieutenant or other Chief Governor or Governors of Ireland to apprehend and detain such Persons as he or they shall suspect of conspiring against her Majesty's Person and Government.
3. An Act to apply the Sum of Eight Millions out of the Consolidated Fund to the Service of the Year 1849.
4. An Act to amend the Laws relating to the Appointment of Vice-Guardians of Unions in Ireland.
5. An Act to authorize an Advance of Money for the Relief of certain distressed Poor Law Unions in Ireland.
6. An Act to repeal an Act of the 21st year of George the Second, for holding the Summer Assizes at Buckingham; and to authorize the Appointment of a more convenient place for holding the same. See 37 L. O. 408.
7. An Act to authorize the Inclosure of certain Lands in pursuance of the Fourth Annual Report of the Inclosure Commissioners for England and Wales. See 37 L. O. 408.
8. An Act to remove Doubts as to the Appointment of Overactors in Cities and Boroughs. See 37 L. O. 448.

9. An Act to indemnify such Persons in the United Kingdom as have omitted to qualify themselves for Offices and Employments, and to extend the Time limited for those purposes respectively until the 25th day of March, 1860. See 37 L. O. 489.

10. An Act for punishing Mutiny and Desertion, and for the better Payment of the Army and their Quarters.

11. An Act to amend the Laws in England and Ireland relative to Larceny and other Offences connected therewith. See 37 L. O. 471.

12. An Act for the Regulation of her Majesty's Royal Marine Forces while on shore.

13. An Act to provide a more effectual Regulation and Control over the Maintenance of poor Persons in Houses not being the Workhouses of any Union or Parish. See p. 101, *ante*.

14. An Act to enable Overseers of the Poor and Surveyors of the Highways to recover the Costs of distraining for Rates. See p. 127, *ante*.

15. An Act to amend an Act of the 54th Year of King George the Third, for the Recovery of small Sums due for Wages in Ireland.

16. An Act to protect Justices of the Peace in Ireland from vexatious Actions for Acts done by them in the Execution of their Office.

17. An Act to continue for Five Years so much of an Act of the 2nd and 3rd years of her present Majesty, as enables Justices to grant Warrants for entering Places in which Spirits are sold without Licence in Ireland.

18. An Act for the holding of Petty Sessions of the Peace in Boroughs, and for providing places for the holding of such Petty Sessions in Counties and Boroughs. See p. 78, *ante*.

19. An Act to make perpetual an Act of the 16th and 11th years of her present Majesty, for authorizing the Removal of Prisoners from the several Gaols in Ireland in cases of Epidemic Diseases.

20. An Act for raising the Sum of 17,786,700*l.* by Exchequer Bills, for the service of the year 1849.

21. An Act to confirm certain Acts of the Legislature of Newfoundland respecting the rebuilding of the Town of Saint John's Newfoundland, and to enable the said Legislature to make other provisions respecting the rebuilding of the said town.

22. An Act to remove Doubts concerning the Validity of certain Grants of Land in the Colony of New South Wales.

23. An Act to authorize further Advances of Money for the Improvement of Landed Property, and the Extension and Promotion of Drainage and other Works of Public Utility, in Ireland.

24. An Act to make Provision, until the 31st day of December, 1860, for a General Rate in Aid of certain distressed Unions and Electoral Divisions in Ireland.

25. An Act for giving effect to the Stipulations of a Treaty between her Majesty and the Queen of Portugal for the Apprehension of certain Deserters.

26. An Act for granting Relief against Defects in Leases made under Powers of Leasing, in certain cases. See p. 187, *ante*.

27. An Act to remove Doubts concerning the Transportation of Offenders under Judgment of Death to whom Mercy may be extended in Ireland.

28. An Act to enable the Commissioners of Greenwich Hospital to regulate and manage the Markets held at Greenwich in the County of Kent.

29. An Act to amend the Laws in force for the Encouragement of British Shipping and Navigation.

30. An Act for the better Preservation of Sheep, and more speedy Detection of Receivers of stolen Sheep, in Ireland.

31. An Act for requiring the Transmission of the annual Abstracts and Statements of Trustees of Turnpike Roads and Bridges in Scotland to the Secretary of State to be laid before Parliament.

32. An Act to continue to the end of the Year 1851 certain temporary Provisions relating to the Collection of Grand Jury Cess in Ireland.

33. An Act for regulating the Carriage of Passengers in Merchant Vessels. See p. 239, *ante*.

34. An Act to amend an Act regulating the Justice of the Peace Small Debt Courts in Scotland.

35. An Act for requiring annual Returns of the Expenditure on Highways in England and Wales to be transmitted to the Secretary of State, and afterwards laid before Parliament.

36. An Act to make Provision, during the present Year, and to the end of the Year 1851, relating to the Collection of County Cess in Ireland, and to the Remuneration of the Collectors thereof.

37. An Act to continue to the 1st day of October, 1860, and to the end of the then next Session of Parliament, an Act to amend the Laws relating to Loan Societies.

38. An Act to continue for Five Years an Act of the 2nd and 3rd years of her present Majesty, for the better Prevention and Punishment of Assaults in Ireland.

39. An Act for further continuing, until the 1st day of August 1860, and to the end of the then next Session of Parliament, certain temporary Provisions concerning Ecclesiastical Jurisdiction in England.

40. An Act to continue, until the 31st day of July, 1860, and to the end of the then next Session of Parliament, certain of the Allowances of the Duty of Excise on Soap used in Manufactures.

41. An Act to extend an Act of the 54th year of King George the Third, for providing for a new Silver Coinage, and for regulating the Currency of the Gold and Silver Coin of this realm.

42. An Act to provide for the Execution for

One Year of the Office of Sheriff in the County of Westmoreland. See p. 220, *ante*.

43. An Act for punishing Mutiny and Desertion of Officers and Soldiers in the Service of the East India Company, and for regulating in such Service the Payment of Regimental Debts and the Distribution of the Effects of Officers and Soldiers dying in the Service.

44. An Act to apply the Sum of 3,000,000*l.* out of the Consolidated Fund to the Service of the year 1849.

45. An Act to amend the Procedure in Courts of General and Quarter Sessions of the Peace in England and Wales, and for the better Advancement of Justice in Cases within the Jurisdiction of those Courts. See p. 379, *ante*.

46. An Act to facilitate the Union of Turnpike Trusts. See p. 422, *ante*.

47. An Act to continue certain Acts for regulating Turnpike Roads in Ireland.

48. An Act to provide for the Administration of Justice in Vancouver's Island.

49. An Act to extend and explain the Provisions of the Acts for the granting of Sites for Schools.

50. An Act for further amending the Laws relating to Sewers.

51. An Act for the better Protection of the Property of Pupils, absent Persons, and Persons under Mental Incapacity in Scotland.

52. An Act to suspend until the 1st day of October, 1850, the making of Lists and the Ballots and Enrolments for the Militia of the United Kingdom.

53. An Act for consolidating and amending several of the Laws relating to Attorneys and Solicitors in Ireland.

54. An Act to continue until the 1st day of October, 1850, and to the end of the then next Session of Parliament, an Act for authorizing the Application of Highway Rates to Turnpike Roads. See p. 405, *ante*.

55. An Act to abolish the Gaol of Newgate in the county of the city of Dublin, and provide Compensation for the Officers thereof, and to enable the Grand Jury of the county of the said city to increase the Salaries of the Chaplains of certain other Gaols thereof, and to reassess on the county of the said city certain Arrears of Grand Jury Cess.

56. An Act to continue, until the 31st day of July, 1850, and to the end of the then next Session of Parliament, an Act of the 5th and 6th years of her present Majesty, for amending the Law relative to private Lunatic Asylums in Ireland.

57. An Act to authorize the Inclosure of certain Lands in pursuance of a Special Report of the Inclosure Commissioners for England and Wales. See p. 403, *ante*.

58. An Act to extend to the Officers of Inland Revenue the Privilege of becoming Members of the Excise Benevolent Fund Society.

59. An Act to amend an Act of the 10th year of her Majesty, for facilitating the Improvement of Landed Property in Ireland.

60. An Act further to amend an Act of the 10th year of her present Majesty, for rendering

valid certain Proceedings for the Relief of Distress in Ireland, by Employment of the Labouring Poor, and to indemnify those who have acted in such proceedings.

61. An Act to continue, until the 1st day of October, 1850, and to the end of the then next Session of Parliament, the Exemption of Inhabitants from Liability to be rated as such in respect of Stock in Trade or other Property to the Relief of the Poor. See p. 405, *ante*.

62. An Act to authorize the Advance of Money out of the Consolidated Fund to the Midland Great Western Railway of Ireland Company.

63. An Act to authorize a further Sum of Money for the Relief of certain distressed Poor Law Unions in Ireland.

64. An Act to remove Doubts as to the authority of the Justices of the Peace in certain matters relating to the Poor in Cities and Boroughs. See p. 259, *ante*.

65. An Act to provide a more convenient Mode of levying and collecting County Rates, County Police Rates, and District Police Rates in Parishes situated partly within and partly without the Limits of Boroughs which are not liable to such rates. See p. 404, *ante*.

66. An Act for enabling Colonial Legislatures to establish Inland Posts.

67. An Act to extend the Remedies of Sequestrators of Ecclesiastical Benefices. See p. 401, *ante*.

68. An Act for facilitating the Marriage of British Subjects resident in Foreign Countries.

69. An Act to facilitate the Performance of the Duties of Justices of the Peace out of Quarter Sessions in Ireland, with respect to Persons charged with Indictable Offences.

70. An Act to facilitate the Performance of the Duties of Justices of the Peace out of Quarter Sessions in Ireland, with respect to Summary Convictions and Orders.

71. An Act to dissolve Regimental Benefit Societies, and to provide for the Application of the Funds of such Societies, and of Regimental Charitable Funds.

72. An Act further to amend the Acts relating to the Offices of the House of Commons.

73. An Act to limit the Enlistment in the Artillery and other Ordnance Corps.

74. An Act for the further Relief of Trustees. See p. 402, *ante*.

75. An Act to defray, until the 1st day of August, 1850, the Charge of the Pay, Clothing, and contingent and other Expenses of the Disembodied Militia in Great Britain and Ireland; to grant allowances in certain cases to Subaltern Officers, Adjutants, Paymasters, Quartermasters, Surgeons, Assistant Surgeons, Surgeons-Mates, and Serjeant Majors of the Militia; and to authorize the employment of the Non-commissioned Officers.

76. An Act to protect Women from fraudulent Practices for procuring their Disflement.

77. An Act to facilitate the Sale and Transfer of Incumbered Estates in Ireland.

78. An Act for the more effectual Taxation of Costs on Private Bills in the House of Lords,

and to facilitate the Taxation of other Costs on Private Bills in certain cases. See p. 481, *ante*.

79. An Act to facilitate the Execution of Conveyances and other Instruments by or on behalf of the New Zealand Company in New Zealand.

80. An Act to repeal the Allowance on the purchase of Stamps and for the receiving and accounting for the Duties on Gold and Silver Plate; and to grant other Allowances in lieu thereof. See p. 402, *ante*.

81. An Act to authorize her Majesty to issue a Commission to inquire into and report upon Rights or Claims over the New Forest in the county of Southampton and Waltham Forest in the county of Essex.

82. An Act to relieve Boroughs, in certain Cases, from Contributions to certain Descriptions of County Expenditure.

83. An Act further to facilitate the Inclosure of Commons, and the Improvement of Commons and other Lands. See p. 361, *ante*.

84. An Act for carrying into effect Engagements between her Majesty and certain Arabian Chiefs in the Persian Gulf for the more effectual Suppression of the Slave Trade.

85. An Act to amend an Act for the regulation of Municipal Corporations in Ireland, so far as relates to the borough of Dublin.

86. An Act to provide additional Funds for Loans by the Public Work Loan Commissioners for building Workhouses in Ireland.

87. An Act to continue certain Turnpike Acts in Great Britain for limited Periods, and to make certain Provisions respecting Turnpike Roads in England.

88. An Act to amend the Laws relating to Pilotage.

89. An Act to reduce the number of Signatures required by Instruments issued by the Lords of the Treasury.

90. An Act to amend the Laws relating to the Customs.

91. An Act to provide for the Collection of Rates in the city of Dublin.

92. An Act for the more effectual Prevention of cruelty to Animals.

93. An Act to amend the Metropolitan Sewers Act.

94. An Act for confirming certain Provisional Orders of the General Board of Health, and for other matters relative to the Public Health and the Improvement of Towns and populous Places.

95. An Act to amend the Law concerning Judgments in Ireland.

96. An Act to provide for the Prosecution and Trial in her Majesty's Colonies of Offences committed within the jurisdiction of the Admiralty.

97. An Act for the Improvement of the city of Dublin.

98. An Act to apply a Sum out of the Consolidated Fund, and certain other sums, to the Service of the year 1849; and to appropriate the Supplies granted in this Session of Parliament.

99. An Act to encourage Endowment of Chapels of Ease, and facilitate Assignment of Pastoral Districts thereto; and to amend an Act of the 8th year of her present Majesty for Marriages in Ireland, and for registering such Marriages.

100. An Act to promote the Advance of private Money for Drainage of Lands in Great Britain and Ireland. See p. 439, *ante*.

101. An Act to amend the Act for the more easy recovery of Small Debts and Demands in England, and to abolish certain Inferior Courts of Record. See p. 280, *ante*.

102. An Act to authorize the Sale of the Royal Pavilion at Brighton, and the Grounds thereof; and to apply the Money arising from such Sale.

103. An Act to continue an Act of the last Session of Parliament, for charging the Maintenance of certain Poor Persons in Unions upon the Common Fund; and to make certain Amendments in the Laws for the Relief of the Poor.

104. An Act to amend the Acts for the more effectual Relief of the destitute Poor in Ireland.

105. An Act for converting the renewable Leasehold Tenure of Lands in Ireland into a Tenure in Fee.

106. An Act to amend and consolidate the Laws relating to Bankrupts. See pp. 297, 317, *ante*.

107. An Act for the Amendment of the Law of Bankruptcy in Ireland.

108. An Act to amend the Joint-Stock Companies' Winding-up Act, 1848. See p. 340, *ante*.

109. An Act to amend an Act to regulate certain Offices in the Petty Bag in the High Court of Chancery, the Practice of the Common Law Side of that Court, and the Enrolment Office of the said Court. See p. 460, *ante*.

110. An Act for suspending until the 1st day of June, 1850, the Operation of an Act passed this Session intituled "An Act for granting Relief against Defects in Leases made under Powers of Leasing in certain cases." See p. 402, *ante*.

111. An Act to amend the Nuisances Removal and Diseases Prevention Act, 1848.

TRANSMISSION OF LETTERS ON SUNDAYS.

IN our Postscript of last week, we printed the Memorial of the Solicitors of London, addressed to the Lords of the Treasury, against the projected alteration at the General Post Office in London.

We presume that the suggestion to Government has been made by Mr. Rowland Hill, the ingenious author of the penny postage scheme. He is naturally anxious to carry his plan to the largest possible extent, in order to increase the revenue of the Post Office; but the government have a

moral duty to perform to the community, independently of the financial objects of the Exchequer.

Remonstrances have come from almost all classes in London against the proposed innovation; and it is well that the Solicitors should give their opinion on the question. Representing, as they do, both the higher and the commercial classes in the most important of their transactions, they are peculiarly competent to judge whether the alleged facility of correspondence be required, and whether it will tend to promote the interests of their clients. By their memorial to the Treasury they negative this question, and we trust their opinion will have its due weight with the authorities.

MR. FOSS'S "JUDGES OF ENGLAND."

THE PUBLIC RECORDS.—ANCIENT ROLLS.

THE second volume of Mr. Foss's work commences with the reign of John, and the valuable series of sketches of each reign preceding the Biographical Notices of the Judges, contain numerous details which are both useful and interesting to the profession. Amongst these we find an account of the various charter, patent, close, fine, liberate, misse, and prestita rolls,—the description of which may be useful to several of our readers. They are as follow:—

"The CHARTER ROLLS contain the royal grants to cities, boroughs, and corporations; grants of fairs, markets, free-warrens, &c. They commence in the first year of this reign, 1199, and terminate in 7 Henry VIII., 1546; after which royal grants were made in the form of patents, and recorded on the patent rolls.

"When a charter recites a former grant in its precise words, it is called an *inspeximus charter*.

"The PATENT ROLLS, or *Rotuli Litterarum Patentium*, record grants of offices, lands, &c., patents of creation, &c. They commence in 3 John, 1201, and are so called from being open, having the great seal at the bottom.

"The CLOSE ROLLS, or *Rotuli Litterarum Clausarum*, enroll all mandates, letters, and writs of a private nature. They commence in 6 John, 1204; and are so called from being folded or closed up, with the great seal on the outside. The *fine* and *liberate* rolls may be considered as branches of the close rolls.

"The FINE ROLLS record general liveries of lands holden *in capite* from the crown, with fines paid for alienation, for relief, for licences to marry, and various other purposes of the like nature. In the early part of this reign they were called OBLATA ROLLS, being ac-

counts of money, or horses, dogs, falcons, hawks, &c., offered to the king by way of oblation or fine for honors, offices, lands, &c. The name of fine roll was afterwards retained; and their series ends in 1641. All these rolls, both oblata and fine, of this reign have been published.

"On the LIBERATE ROLLS are recorded precepts to the treasurer and chamberlains of the Exchequer for the payment of money; and orders to sheriffs to deliver possession of lands and goods which had been extended. They are so called from the order to deliver being expressed by the word '*Liberate*.' They also contain writs of '*allocate*' and '*compute*;' being commands to *compute* with and *allow* to accountants sums they have paid in pursuance of royal commands. These precepts or writs are frequently entered on the close roll: and no separate liberate rolls exist after the reign of Henry VI.

"There are two other rolls of this reign affording much interesting information.

"The MISSE ROLLS, which contain an account of the king's daily expenses. The only rolls of this series which are now extant are those of 11 and 14 John; both of which have been published.

"The PRESTITA ROLLS record the sums of money issued out of any of the royal treasuries by way of *imprest*, advance, or accommodation: and which are afterwards to be accounted for. Only five of these rolls remain; those of 7, 12, 14, 15, and 16 John. That of 12 John has been published; and it and the Misse roll of 11 John are peculiarly valuable, as they are the only Chancery records of those years which now exist."

CONVEYANCING REFORM.

BURDENS ON LAND. LAWYERS' CHARGES.

It has been supposed by the advocates of real property reform, that the expense of conveying land by the present forms of deeds in Great Britain, retards its transfer, renders it less saleable, and diminishes largely the amount of the purchase-money. Land, they say, can be bought in England for 30 years' purchase; but in France and other countries it will not be sold under 50 or more years' purchase. The cause of this difference is ascribed to the lawyers' charges! We always thought this inference incredible, and now lay before our readers an extract from one of the masterly leading articles in *The Times*, from which we think the main cause will be easily discovered:—the *infinite subdivision* of landed property and the *intense reluctance* to part from it.

The Times of Sept. 27, thus observes on the remarkable speech of M. Dupin at an agricultural meeting:—

"As M. Dupin proceeds with his description of this dangerous class, [the 'red republicans,' or destructives,] we begin to trace the difference between the French and the English villagers. 'It consists,' he says, 'of people who *not having been able to gain or preserve a patrimony*, would very willingly partake of that of their industrious and economical neighbours, without reflecting that the latter would not be in a humour to allow themselves to be despoiled, but would vigorously defend themselves against robbery and spoliation. Such are the principal apostles of Communism!' To the numbers and activity of this class M. Dupin refers all the recent convulsions and calamities of France. We can easily believe him.

"It is a class almost peculiar to France, or at least developed there to an unexampled extent,—the class of bankrupt proprietors. When the property of the soil is continually divided, every fresh degree of subdivision adds to its embarrassments. The five sons that divide their paternal estate enter on their several portions with habits, tastes, and ambition at least equal to their father's, but with only one-fifth of his means. The fragmentary estate must also receive a still cheaper and less efficient cultivation. At a certain stage of comminution the surface will not repay any expenditure of capital beyond the personal labour of its occupier, who soon finds the produce barely sufficient for his domestic wants on the most miserable scale. Born and bred to be a proprietor—delusive title!—he is incapable of any other employment. *He hugs his native soil, and so long as he has a place to plant the sole of his foot on, he has not the heart to expatriate himself.* The leprosy of debt creeps over the enfeebled system, drains its little strength, and converts what should be the nutriment of industry into the running sores of luxury and extravagance. The virtual rent of France is spent at Paris, not by proprietors, but by mortgagees; and proprietor is only a specious name for one who is really a slave. Such a machine must be always throwing off, as if by a law of production, crowds of bankrupts. What are they to do? There is not capital to employ them on the land. The race of improving land-owners, and enterprising farmers, is almost unknown there. Poor Law or labour rates, there are none. Such are the men that M. Dupin says become the principal apostles of Communism, and everywhere, in every village and hamlet, propagate doctrines which 'lead to the brutalising of the human race, by the destruction of all the conditions of liberty, honour, and morality, on which Providence has caused civil society to repose.'"

If some of the burdens (a very small part only, we believe,) under which the landed proprietors in England labour, can be traced to the expenses of giving a *secure title*, they will probably think it preferable to bear that burden, than seek a remedy in the continual subdivisions of land, accompanied by the dangerous results which seem inevita-

ble. They may say with the Peruvians, "We need no change, and least of all such change as *that* will bring us."

ORDERS IN CHANCERY.

PRACTICE IN THE PETTY BAG OFFICE OF THE COURT OF CHANCERY.

THE Right Hon. Charles Christopher Lord Cottenham, Lord High Chancellor of Great Britain, with the advice and assistance of the Right Hon. Henry Lord Langdale, Master of the Rolls, doth hereby, in pursuance of an Act of Parliament made and passed in the Session of Parliament held in the 12th and 13th years of the reign of her present Majesty, intituled "An Act to amend an Act to regulate certain Offices in the Petty Bag in the High Court of Chancery, the Practice of the Common Law Side of that Court, and the Enrolment Office of the said Court, and in pursuance of all other powers enabling him in this behalf, order and direct that the several orders comprised in the general order of the 29th Dec. 1848, which are respectively numbered 11 and 12, be and the same are hereby abrogated and discharged."

COTTENHAM, C.
LANGDALE, M.R.

Aug. 3, 1849.

* The orders thus repealed are as follow:—

"11. The name and addition of the prosecutor in an action of *scire facias* may be inserted in the writ, by adding after the usual words, 'we are given to understand and be informed,' words in the following, viz. :—'By A. B., of, &c.' stating at length the name, addition, and place of residence of the prosecutor.

"12. If the name of a prosecutor be inserted in a writ of *scire facias*, the fiat of the Attorney-General for the issuing of such writ is not to be filed, unless the same contains the name and address of such prosecutor."

LEGAL EDUCATION.

UNIVERSITY OF LONDON. — CERTIFICATES OF PROFICIENCY.

To the Editor of the Legal Observer.

SIR,—In a letter published in your Observer of the 22nd of September last, the writer, in treating of Legal Education as a means of improving the Profession, refers to the new Charter of the University of London, whereby the Chancellor, Vice-Chancellor, &c., are empowered to grant certificates of proficiency to candidates.

May I be allowed to say on the authority of the Registrar of the University, (who has given me permission to make this use of a communi-

cation received this morning from him in consequence of the letter above referred to), that at present the University of London have not granted and do not purpose to grant any certificate of proficiency to law students, except those who graduate in the colleges therewith connected. Having been misled by a false hope myself, I am desirous of warning others against entertaining such expectations of honours. A course of two years' study is requisite to fit a student to stand for his B. A., and after a twelvemonth from the obtaining that degree, he may go up for his B. L. Unless, therefore, the Incorporated Law Society, or some other authority apply to the Secretary of State, to allow the attendance on the regular course, of lectures thereat, to be equivalent to an academical course of study, I fear we stand but a poor chance of either certificates of proficiency or degrees from the University of London, or any other university: as I believe the Incorporated Law Society are not empowered, or do not intend, to require any other examination than that which now takes place for admission.

E. B.

NOTES ON THE CIRCUIT.

ANCIENT CUSTOM.—WATER IN MINES.— DAMAGE TO RIVER AND ADJOINING LANDS.—EVIDENCE.

An important action, that of *Tucker v. Fox and another*, was tried before Mr. Justice Williams, on the 30th July, at Bodmin, in which compensation was sought to be recovered for an injury sustained by the plaintiff in consequence of the defendants having discharged a large quantity of foul water from their mine, mixed with salts of copper, into the river Seaton, whence the plaintiff's lands were irrigated, and from the injurious nature of the water his crops were rendered useless.

The defence, besides that of enjoyment for 20 years, was that a custom prevailed in Cornwall, entitling the owner of a mine to discharge the refuse water into any stream not being navigable. Evidence was given to show the existence of the custom; but the learned judge said, it seemed contrary to natural justice that such a custom should exist, involving, as it did, nothing more nor less than this—that a person being in possession of property to its full extent, it was subject to the invasion by a perfect stranger who had set on foot for his own benefit a particular manufacture. It was a strong thing, because a person set about a work for his own profit, to subject another to have his property destroyed to any extent, in order that the other might work his property profitably. It savoured very much of injustice, and therefore the existence of the custom would require extremely cogent evidence. The mere fact that the owners of mines had, in point of truth, for a great number of years exercised this sort of easement of polluting the streams, and causing damage to others, ought to be received

with a considerable degree of caution. If they thought that, through a feeling of good nature, a man who had sustained an injury had not complained, because he had not wished to interfere with a small matter which was for the general benefit of the county, that would carry the case no way at all; or, if they thought it was done because a man had conflicting interests, having, perhaps, a mine himself, or if there had been acquiescence, which was fairly attributable to anything but an acquiescence to a right which it was impossible to resist, it would be of no value at all. In order to be of value, the exercise of this quasi privilege must have been shown to have existed as of right, because conferred by a custom. The most important class of proof was wanting—a case where it had been shown that there had been an injury sustained, compensation sought, but successfully resisted on the ground of its being matter of right. The jury would desert their duty if they took into their consideration the consequences of their verdict.

The jury retired, and after five hours' deliberation presented themselves before the judge, stating there was no chance of their agreeing upon a verdict, as they were equally divided. The Judge said, they must again retire, and in about an hour sent for them, and asked if they had agreed. They said they had not, and in truth had not mentioned the subject since, as it was of no use. They were consequently then discharged.

SOLICITORS' COSTS AS MORTGAGEES.

In a suit (mentioned by a Correspondent) for the administration of an estate, we think that where a solicitor is the mortgagee and acts professionally for himself and other defendants, he is entitled to his full costs. This case is not within the rule as to the costs of solicitors who are executors or trustees.

DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From 2nd Oct., to Oct. 19th, 1849, both inclusive, with dates when gazetted.

Clarke, William, and Robert Eagle Clarke, Thetford, Attorneys and Solicitors. October 16.

Cornes, Edward, and Robert Henry Whitecombe, Birmingham, Attorneys, Solicitors, and Conveyancers. Oct. 5.

Veley, Augustus Charles, John Cunningham, and Augustus Cunningham, Braintree, Attorneys, Solicitors, and Conveyancers, so far as regards the said John Cunningham. Oct. 9.

PERPETUAL COMMISSIONERS.

Appointed under the *Fines and Recoveries Act*, with date when gazetted.

Bunty, Henry, Newbury, in and for the county of Berks. Oct. 9.

Stump, Thomas, of Warwick, for the County of Warwick.

RECENT DECISIONS IN THE SUPERIOR COURTS:

AND SHORT NOTES OF CASES.

Vice-Chancellor of England.

Wellesley v. Wellesley, Mornington v. Mornington. July 12, 13, 14, 21, 1849.

PRACTICE.—SUPPLEMENTAL BILL.—PARTIES.—CONSTRUCTIVE NOTICE OF FORMER DEED.—RIGHT TO ANNUITY.

When a party has been voluntarily dismissed by the plaintiff, he may be brought back before the Court by supplemental bill, secus, where the party obtains his own dismissal.

Where the solicitor to the contracting party is a deed of separation was also solicitor to the son, and acted on behalf of both parties in preparing a deed barring the entail of family estates: Held, that this constituted sufficient notice to the son of an annuity granted by the deed of separation.

UPON the separation of Lord and Lady Mornington, in June, 1834, articles were executed whereby Lord Mornington agreed within one year to secure to Lady Mornington an annuity of 1,000*l.* by charging his freehold estates, or by investing an adequate sum of money, or by the best means in his power. In December, 1834, Lord Mornington and his son barred the entail to their estates, and conveyed them to trustees to raise the sum of 462,000*l.* to pay off incumbrances, and afterwards to secure to Lord Wellesley an annuity during his father's life, and the estates were to be limited to such uses as they should jointly appoint, and in default of such appointment to Lord Mornington for life with remainder over to his son absolutely, if he survived his father, and if not in tail male. There was also a power for Lord Mornington to jointure his present or any future wife not exceeding 1,500*l.* a-year. The original suit was instituted against Lord Mornington and Lord Wellesley, in 1839, to have it declared that Lady Mornington was entitled to the annuity of 1,000*l.* out of her husband's estate, but the son had been dismissed by the plaintiff. A demurrer to the bill for want of parties having been allowed, a supplemental bill was filed making Lord Wellesley and several incumbrancers parties.

Rolt, Wilcock, and Freeling, for Lady Mornington; *Bethell, Lloyd, and Nalder*, for Lord Wellesley, contended that as their client had been dismissed he could not be made a party by supplemental suit, and that he had no notice of the articles; *Malins and Baggallay*, for Lord Mornington; *Cooper, Chayldress, Schomberg, Beadan, Cooke, and Sidebotham*, for the incumbrancers.

The Vice-Chancellor said, that the decision in *Wellesley v. Wellesley*, 6 Sim. 497; 4 Myl. & C. 584, must govern this case. Lord Wellesley, having been voluntarily dismissed by the plaintiff, she was not bound by that act, and might at any time amend and make him again a party. The case was essentially different from that of *Latour v. Holcombe*, 8 Sim. 76; 11

Sim. 71; for then the party moved to dismiss for want of prosecution, and after such an order had been made, the plaintiff asked to bring the party again before the Court, which was refused. Then as to the notice to Lord Wellesley, it appeared that Lord Mornington's solicitor had acted for him in the matter of the separation, and also for Lord Wellesley, and that what took place was suggested by him; there was consequently sufficient notice of the articles. The decree would therefore be in the terms asked, and a declaration made that Lady Mornington had acquired a right to have the provisions of the deed of June, 1834, carried out by Lord Wellesley, under that of December, 1834.

Vice-Chancellor Knight Bruce.

Carrington v. Pell and another. July 23, 1849.

EVIDENCE.—POST-DATED CHEQUE.—STAMP.

The Court rejected the evidence of a defendant on behalf of another defendant in a suit for the delivery up of a cheque for cancellation, where it appeared that the latter only derived his interest in the same through the former; and the cheque being post-dated and not stamped, the bill was dismissed, but without costs on either side.

THE plaintiff employed one Mulliner to look out for horses in the country, who bought a black horse from the defendant, agreeing to give a chesnut horse and a cheque for 70*l.* The defendant, however, refused to accept the chesnut horse, but, upon a purchaser being found, received the 45*l.* paid for the same. On giving the cheque for 70*l.*, the plaintiff stated he had no cash at that moment at his banker's, and therefore dated it several days after the day on which it was drawn. The cheque was returned from Messrs. Ransom & Co. with "no account" written across it. The plaintiff alleged that an agreement was thereupon made, that if the cheque were not paid within six weeks, the defendant was to keep the black horse and also the 45*l.*, and the cheque should be delivered up. The defendant, however, by his answer, stated that the cheque was retained by him for the keep of the animal and for any loss which he might suffer by a re-sale. The horse was afterwards, having contracted disease, sold at Tattersall's for 25*l.* The defendant then passed the cheque to a Mr. Jackson, who brought an action to recover the amount, the defendant being attorney, and was also examined under an order on behalf of Mr. Jackson; but on the trial a nonsuit was entered; the post-dating of the cheque having appeared from the evidence. This bill was therefore filed for the delivery up of the cheque to be cancelled.

Wigram and Baggallay for the plaintiff; *Malins and Rarburgh* for the defendant Jackson, proposed to read the evidence of the de-

fendant Pell, citing Lord Denman's Act, (6 & 7 Vict. c. 85,) and *Wood v. Rowcliffe*, 6 Hare, 183; *Russell and T. H. Terrell* for the defendant Pell.

The Vice-Chancellor rejected the evidence of Mr. Pell, as Mr. Jackson had no interest, except on behalf of the former. As the cheque has not been stamped and the plaintiff had thereby violated the Stamp Act, he was disqualified from seeking equitable relief respecting it, and the bill would therefore be dismissed without costs on either side and without prejudice to any action.

Queen's Bench.

Regina v. Bowen. June, 14, 1849.

INDICTMENT.—FALSE PRETENCES.—AFTER TRIAL.

Held, after verdict, that an indictment charging, that the defendant falsely pretended to certain persons therein named, that he had sued out a writ of right in which they were interested, with intent to defraud them, is good.

Quære, whether upon demurrer it could be

supported according to *Reg. v. Henderson*, 2 Mood. C. C., c. 192?

THE indictment in this case charged, that the defendant falsely pretended to certain persons therein named, that he had sued out a writ of right in which they were interested, with the intention to defraud them. The defendant having been found guilty, a rule nisi had been obtained in arrest of judgment and for a new trial.

P. Thompson, in support of the rule, contended, that as the indictment did not allege that the prisoner made the false representation knowing it to be false, it was defective: citing *Regina v. Henderson*, 2 Mood. C. C., c. 192.

Townsend and Benson, contra.

The Court held, that the indictment after verdict was good. The case of *Regina v. Henderson*, cited at bar, came on upon demurrer, and there appeared an oversight in not having called the attention of the Court to the word "knowingly" in the statute 7 & 8 Geo. 4, c. 29. As, however, Mr. Justice Wightman, who presided at the trial, was not satisfied with the verdict, there would be a new trial upon payment by the defendant of costs.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Common Law.

PRACTICE.

[Concluded from our last number.]

JUDGMENT AS IN CASE OF NONSUIT.

Where a peremptory undertaking to proceed to trial at a particular sittings is given, and the cause is duly entered for those sittings, but it is made a remanet by the Court, that is not a breach of the plaintiff's undertaking, and, therefore, the defendant is not entitled to judgment as in case of nonsuit. *Rizzi v. Foletti*, 5 D. & L. 808.

Case cited in the judgment: *Lumley v. Durbourgh*, 14 M. & W. 295; 3 D. & L. 80.

JURAT.

See *Affidavit*, 4.

JURISDICTION OF JUDGE.

See *Appeal; Stay of Proceedings*.

LIMITATIONS, STATUTE OF.

1. *Payment of interest*.—In an action by an executor, for money lent by his testatrix to the defendant, more than six years before the commencement of the suit, to which there was a plea of the Statute of Limitations, it was proved, that, within six years before the commencement of the suit, the plaintiff filed a bill against the defendant for a discovery and account, and the defendant in his answer admitted the payment by him to the testatrix of half-yearly pay-

ments of 8l. 10s. each, down to a period within the six years; but alleged that they were paid, not as interest upon a debt, but by way of annuity for the life of the testatrix, in pursuance of an agreement made between them at a period when the testatrix gave the defendant a sum of 340l.: Held, that the jury were at liberty to reject the latter part of the statement, and that the answer might be construed by them merely as admitting the payment of the money, and that the appropriation of it, as interest upon the debt sued upon, might be proved by other evidence. *Baldon v. Walton*, 1 Exch. B. 617.

Case cited in the judgment: *Waters v. Tompkins*, 2 Cr., M., & R. 723.

2. *Contract for sale of stock*.—A contract for the sale of stock, exchequer bills, and securities of that description, in which the property passes by delivery, is not within the 17th act of the Statute of Frauds, 29 Car. 2, c. 3. *Eseltine v. Siggers*, 1 Exch. R. 856.

See *Amendment*, 4.

MARRIED WOMAN.

1. *Acknowledgment of deed*.—The Court permitted an acknowledgment of a married woman, made in India, under the 3 & 4 Wm. 4, c. 74, to be received, on producing a verified certificate of a superior military officer, that the person, before whom the affidavit of acknowledgment was made, was a justice of the peace; there being no notary at the place of acknowledgment. *In re Daley*, 5 D. & L. 333.

2. *Acknowledgment of deed*.—The Court permitted an affidavit of verification of an acknowledgment by a married woman to bar her dower before commissioners, to be received by the officers of the Court; although written on paper, instead of parchment. *Eparte Carr*, 5 D. & L. 488.

3. *Acknowledgment*.—Although a British consul in a foreign country has not power *per se* to administer oaths of verification of the proceedings before a commission under the 3 & 4 Wm. 4, c. 74, s. 83; yet if a notary public in the foreign country certify that by the laws of the country the British consul has power to administer an oath, an affidavit of verification made before the consul will be received. *Ex parte Hutchinson*, 5 D. & L. 523.

MISNOMER.

1. It is no ground for setting aside a writ of summons that it is framed as a *pluries* writ, when the *præcipe* is, for an *alias*, or that it is issued against Baron A., without stating his christian name. *Wells v. Suffield*, 4 C. B. 750.

2. A *præcipe* being obtained for an *alias* writ, a *pluries* was by mistake issued: *Held*, to be no ground for setting aside the *pluries*. *Wells v. Lord Suffield*, 5 D. & L. 177.

3. A writ described a defendant as "the Right Hon. Baron Suffield," his true description being "the Right Hon. Edward Vernon Harbord, Baron Suffield;" the Court refused to set aside the process on that ground. *Wells v. Lord Suffield*, 5 D. & L. 177.

NEW TRIAL.

In an action by an allottee in a projected railway, upon the failure of the scheme, for the recovery of his deposit, where he had executed the usual subscribers' deed, there being no evidence that such execution was obtained by fraud, the defendant, under the direction of the judge, obtained a verdict: *Held*, that as the plaintiff should have been nonsuited, a rule for a new trial ought not to be granted, although some observations made by the learned judge to the jury, as to what would constitute fraud, might not be legally correct; but in such a case the Court will grant a rule to enter a nonsuit. *Atkinson v. Pocock*, 1 Exch. R. 796.

NOTICE OF TRIAL.

1. It is no objection to a notice of trial that it is given after the cause has been set down for trial. *Ginger v. Pycraft*, 5 D. & L. 554.

2. A notice of trial purporting to be a continuance only of a former notice, but delivered in sufficient time to be of avail if it had been an original notice, was held to be good as an original notice. *Ginger v. Pycraft*, 5 D. & L. 554.

3. The form of a notice of trial is immaterial, if it be delivered in time, and clearly and unquestionably informs the defendant that the plaintiff intends to proceed to trial at a certain specified time. *Ginger v. Pycraft*, 5 D. & L. 554.

Case cited in the judgment: *Tyte v. Stevenson*, 2 W. Bl. 1298.

NULLITY.

1. A judge at chambers having made an order to set aside the verdict for the plaintiff on a writ of trial, on the ground of an insufficient notice of trial: *Held*, that the judge's order was an irregularity only, and not a nullity; and, therefore, might be waived. *Orgill v. Bell*, 5 D. & L. 217.

2. Where an incorrect copy of a writ of summons was served as if tested on a Sunday, but the writ itself was regular: *Held*, that the defendant was not bound to treat the proceedings as a mere nullity, although the plaintiff had taken no subsequent steps; but might come to set the copy and service aside. *Corrall v. Foulkes*, 5 D. & L. 590.

NUL TIEL RECORD.

1. It is necessary, in order to try the issue joined on a plea of *nul tiel record*, that the issue roll should be made up and carried in, notwithstanding the Reg. Gen., H. T., 2 Wm. 4, pt. ii. r. 15. *Jackson v. Oates*, 5 D. & L. 231.

2. In a declaration on a replevin bond, it was alleged that A. H. (the plaintiff in replevin) levied his plaint in the County Court against the present plaintiff, and that it was adjudged that A. H. should take nothing by his plaint. The defendant pleaded *nul tiel record*. Issue was joined on this plea, and the plaintiff produced an entry from the County Court book, in which the entry was as to the plaint "struck out for want of jurisdiction, on the ground of a disputed title having been sworn to:" *Held*, that this entry did not support the averment in the declaration. *Tubby v. Stanhope*, 5 D. & L. 781; *Tubby v. Fisher*, *Id.* 783.

OUTLAWRY.

It is not necessary, in proceeding by writ of error to reverse a judgment of outlawry on meane process, that there should be an affidavit that the attorney suing out the writ, is duly authorized by the outlaw.

Nor is it necessary that an appearance by the outlaw should be entered previous to suing out the writ. *Cornwall v. Ives*, 5 D. & L. 399. See *Appearance*.

OYER.

The rule that where *oyer* is demanded, the defendant has the same time to plead after it is granted, as he had at the time of the demand, applies in respect of pleas in abatement as well as of pleas in bar. *Kerfoot v. Edwards*, 5 D. & L. 248.

PAUPER.

A plaintiff suing *in forma pauperis*, may execute a release of the cause of action to the defendant, without the consent or knowledge of his attorney; if it be done *bona fide* with a view to settle the action, and not from any intention to deprive the attorney of his costs.

The Court refused to set aside a release *puis darrein continuance* in a pauper cause, on the ground that the release had been given without the knowledge or consent of the plaintiff's at-

torney; where it appeared to have executed in pursuance of a *bond fide* arrangement between the plaintiff and the defendant to settle the action, and without any collusion on their part to deprive the attorney of his costs. *Jones v. Bonner*, 5 D. & L. 718.

PRISONER.

A defendant in execution under a writ of extent at the suit of the Crown, who has been taken from prison under an order of the Commissioners of Excise for the purpose of giving evidence, without any writ or other process being issued, and after giving such evidence, has been re-conveyed back to prison, is not entitled to his discharge; as even assuming it to amount to a voluntary escape, the Crown had power to retake and detain him in custody under the original writ. *Reg. v. Renton*, 5 D. & L. 750.

Case cited in the judgment: *Anon.*, Savile, 29.

PRIVILEGE OF PARLIAMENT.

A member of the House of Commons is privileged from arrest under a *ca. sa.* for 40 days after each meeting of parliament. And the privilege is equally applicable to the meeting of a new parliament after a dissolution, as to the meeting of a parliament after a prorogation, *Goudy v. Duncombe*, 5 D. & L. 209.

Case cited in the judgment: *Atthol v. Earl of Derby*, 2 Lev. 72.

PROCESS.

See *Writ of Summons*.

QUO WARRANTO.

Previous to the passing of the 5 & 6 Wm. 4, c. 76, the mayor for the time being, of a borough corporate, named in schedule A, of that act, held and exercised the office of coroner also for the borough. Subsequent to that act, the borough petitioned for and obtained a separate Court of Quarter Sessions, and appointed a coroner under the 62nd section of that act: *Held*, on motion to obtain the costs of an information in the nature of a *quo warranto*, brought to try the right to that office, that it was not an "office" within the meaning of 9 Anne, c. 20, s. 5, so as to entitle the relator to costs, on judgment for the Crown.

An "office," to come within the meaning of the 9 Anne, c. 20, s. 5, must be a separate office. *Regina v. Grimshaw*, 5 D. & L. 249.

RULE ENLARGED.

Where a rule is enlarged by consent, it is in the Common Pleas, notwithstanding such consent, the practice to serve the enlarged rule. *Batty v. Marriott*, 5 D. & L. 477.

SCI. FA.

1. *Plaintiff holding a collateral security.*—The Court refused to set aside a rule which had been made absolute for a *sci. fa.* against former members of a banking co. partnership, under the 7 Geo. 4, c. 46, s. 13, on the ground that the party by whom the rule had been obtained had omitted to disclose the fact of his

holding a collateral security upon property belonging to the bank, which, it was believed, might, by management and care, be made productive of an amount exceeding the judgment-debt. *Field v. Mackenzie*, 4 C. B. 725; 5 D. & L. 348.

2. *Former partners.*—Under the 7 Geo. 4, c. 46, s. 13, a party moving for a *sci. fa.* in order to have execution against former members of a banking company, on a judgment against the registered officer, must show that he has made substantial and *bond fide* endeavours to obtain an available execution against the members for the time being; and the Court will decide, on the motion, whether sufficient diligence has been used in the particular case.

It is not necessary that execution should first be issued against all the members for the time being—*Wilde, C. J., dubitante*. Slight evidence that the parties sought to be charged as such, were members at the time of the contract, will suffice to induce the Court to grant a rule for a *sci. fa.* against them, in the absence of affidavits on their part negating the facts constituting their liability. The Court refused to allow the rule nisi to be drawn up for an earlier day than by the ordinary practice it would be drawn up, upon a suggestion that the period limited by the statute for proceedings against former members, had nearly expired. *Field v. Mackenzie*, 4 C. B. 705.

3. Where a rule obtained by a defendant had been discharged with costs, and the costs taxed on the Master's allocatur, and more than a year and a day after the allocatur, the plaintiff issued a *ca. sa.* upon it; *Held*, on motion to set aside the *ca. sa.*, and to discharge the defendant out of custody, that the proceedings were regular, and that it was not necessary that the plaintiff should have issued a *sci. fa.*, or obtained the leave of the Court to issue execution. *In re Spooner v. Payne*, 5 D. & L. 310.

4. Where a rule of Court for payment of money is more than a year and a day old, it is not necessary to sue out a *sci. fa.* or to obtain the leave of the Court, before suing out execution upon it, by virtue of 1 & 2 Vict. c. 110, s. 10. *In re Spooner v. Payne*, 5 D. & L. 310.

5. A writ of *sci. fa.* on a judgment recovered against a public officer of a banking company, under the 7 Geo. 4, c. 46, alleged that C. S. F., "at the time of the commencement of the said action in which the said judgment was so obtained as aforesaid, and at the time of the recovery and giving of the said judgment, was, and from thence continually has been, and still is, a member of the said co. partnership." The writ having been issued without leave of the Court, the Court quashed it, on the ground that the plaintiff might obtain execution under it against the said C. S. F., as being a member at the time of judgment recovered, although the leave of the Court to issue the writ had not been obtained. *Bank of Scotland v. Forsyth*, 5 D. & L. 377.

Case cited in the judgment: *Edwards v. Trustwell*, 5 D. & L. 219.

SECOND APPLICATION.

Former rule in wrong party's name.—A judgment signed in an action brought by *A.* in the name of *B.*, having been set aside by a judge's order, a rule nisi was obtained to rescind that order, on the ground that the summons upon which it was made, had been improperly altered by the defendant's attorney.

This rule, which, by mistake, purported to have been moved on behalf of *B.*, was discharged upon an affidavit of *B.*, showing that the rule had been moved without any authority from him, and that the alteration in the summons had been made with his sanction: *Held*, that a second application for the same purpose might be made on the behalf of *A.*, the party really interested. *Tilt v. Dickson*, 4 C. B. 736.

SEQUESTRATION.

A writ of sequestration on a judgment debt, at the suit of the plaintiff, had issued in April, 1834, upon which the bishop had granted his warrant of sequestration. On the 1st of Oct. 1838, the 1 & 2 Vict. c. 110, s. 17, took effect. In Dec. 1839, and in Sept. 1840, other writs of sequestration at the suit of other parties were sued out, and were in the hands of the bishop to execute: *Held*, that the Court would not order the bishop to hand over the first-mentioned writ in order that the plaintiff might indorse it, to levy the interest as well as the debt. *Watkins v. Tarpley*, 5 D. & L. 226.

SERVICE OF ORDER.

A party, who obtains a judge's order, can derive no benefit from it unless it be duly served upon his opponent. *Belcher v. Goodered*, 4 C. B. 472.

SETTING ASIDE PROCEEDINGS.

1. The defendant having entered an appearance in person, "*C. F. A. W.*," Duke of Brunswick and Lunenburg, sued as *C. F. A. W. D'Este*, commonly called the Duke of Brunswick," delivered a plea to the jurisdiction, with an affidavit of verification, respectively intitled "*C. F. A. W.*," sovereign Duke of Brunswick and Lunenburg, sued as *C. F. A. W. D'Este*, commonly called the Duke of Brunswick."

The plaintiff, treating the plea as a nullity, signed judgment: The Court refused to set aside the judgment, without an affidavit of merits. *Mundee v. Duke of Brunswick*, 4 C. B. 321.

2. A writ issued in an action intended to be brought against one John G., by mistake described him as Henry G., and was served upon Henry G. The mistake in the service being discovered, notice was given to Henry G. not to appear. A copy of a *pluries* summons was some months afterwards left at the residence of John G., the real defendant, still describing him as Henry G. The defendant gave this copy to Henry G., in whose name one Lewis, an attorney, entered an appearance, demanded a declaration, and afterwards (with full knowledge that the appearance was no appearance in the cause) signed judgment of *non pros.* for want of a declaration: The Court set aside the judg-

ment for irregularity, with costs to be paid by the attorney. *Belcher v. Goodered*, 4 C. B. 472.

SHERIFF.

Where a sheriff's officer takes more than the fees allowed under 7 Wm. 4, and 1 Vict. c. 55, for executing a writ, the rule may call upon the sheriff to show cause why he should not return the excess, as well upon his officer to show cause why a writ of attachment should not issue against him, for his contempt in receiving the excess.

Where the excess complained of was charging for remaining in possession a longer time than was necessary, and for more men than were necessary to keep possession, and the affidavits were contradictory, the Court referred the matter to the Master for his report. *Blake v. Newburn*, 5 D. & L. 601.

See *Attachment*.

SPECIAL CASE.

Where a special case has been stated in pursuance of the 3 & 4 Wm. 4, c. 42, s. 25, the Court will not hear it argued if it contains a clause that the Court may draw such inferences as a jury might draw, and the parties to be at liberty to turn the special case into a special verdict. *Engstrom v. Brightman*, 5 D. & L. 499.

STAY OF PROCEEDINGS.

1. *Judge's order.*—A judge's order staying the proceedings until a given day, in order to afford time for an application to the Court, does not dispense with the necessity of the ordinary notice of motion, in order to entitle the party to have his rule nisi drawn up with a stay of proceedings. *Belcher v. Goodered*, 4 C. B. 472.

2. *Jurisdiction of judge at chambers.*—In an action against a surety upon a bond conditioned for the due payment to the Receiver General of all sums received by a collector of assessed taxes, a judge at chambers has no authority to order the proceedings to be stayed as to certain items in the plaintiff's particulars of demand, upon payment of the amount into Court. *Kepp v. Wiggett*, 4 C. B. 678.

STRIKING OUT COUNTS.

1. *Fifth rule of H. T.*, 4 Wm. 4.—Where a judge at chambers has declined to make an order, upon an application under the fifth and sixth rules of Hilary Term, 4 Wm. 4, to strike out counts as being in apparent violation of the former rule, it is competent to the Court to entertain the matter. *Grissell v. James*, 4 C. B. 768.

Case cited in the judgment: *Chelmondeley v. Payne*, 3 N. C. 709; 4 Scott, 418.

2. The plaintiff contracted to purchase from *A.* a ship then in course of building at Quebec, and to accept a bill for the price, on the vessel being completed according to the terms of the contract, and registered in his name. On the bill being presented for acceptance, the plaintiff declined to accept it, on the ground that *A.* had not duly performed his contract,

whereupon the defendant undertook, that, if the plaintiff would accept the bill; he, the defendant, would abide by and perform the award of certain referees to be appointed to determine what should be done, in case, on the arrival of the ship at Dublin, the plaintiff should have any cause of complaint against *A.* in respect of his performance of the contract. On the ship's arrival, the referees awarded that a certain sum was payable to the plaintiff on account of deficiencies in the ship.

The Court refused to allow the plaintiff, in declaring against the defendant upon his guarantee, to add to a count for non performance of the award, a count alleging, that, in consideration of the plaintiff's accepting the bill, the defendant agreed to become personally responsible for the due performance of the contract by *A.*,—holding the joinder of such counts to be in apparent violation of the fifth rule of *H. T.*, 4 Wm. 4. *Fagan v. Harrison*, 4 C. B. 909.

STRIKING OUT PLEAS.

Not fairly corresponding with the abstract.—Where pleas are placed which do not correspond with the abstract delivered with the summons to plead several matters, the proper mode of taking the objection, is, by motion to strike out the pleas. *Flight v. Smale*, 4 C. B. 766.

TERM'S NOTICE.

When necessary.—Where, in this Court, there have been no proceedings within four terms (or, in Queen's Bench, within a year) after issue joined, a term's notice of the plaintiff's intention to proceed, must be given before he can give notice of trial: it is not enough to give a term's notice of trial. *Tilley v. Collins*, 4 C. B. 758.

TRIAL AT BAR.

Writ of octo vel decem tales.—For defect of jurors on a trial at bar, a rule absolute granted for a writ of *octo vel decem tales*.—*Baron v. Denman*, 1 Exch. R. 769.

TRIAL.

See *New Trial*; *Notice of Trial*.

WAIVER.

The direction in respect of the interest of the sheriff, in the 39th section of the Lands' Clauses Consolidation Act, (8 & 9 Vict. c. 18,) is introduced for the protection of the party against whom the interest would operate, and he may therefore waive the protection if he so elects.

A railway company having issued their warrant to the sheriff to summon a jury to assess compensation, under the 8 & 9 Vict. c. 18, s. 39, the under-sheriff, before whom the inquisition was to be taken, informed the party whose land was to be assessed, that, he, the under-sheriff, was a shareholder in the railway company: *Held*, that as the party did not object, but proceeded with the inquisition before the under-sheriff, he must be taken to have waived any objection arising from the interest of the under-sheriff under the statute. *Espartero Buddelley*, 5 D. & L. 575.

WARRANT OF ATTORNEY.

1. A party may, by the terms of the warrant of attorney, waive the necessity of an affidavit being made of his having been recently seen alive, in order to obtain leave to enter up judgment after a year and a day have elapsed. *Tripp v. Stanley*, 5 D. & L. 262.

2. On a motion to enter up judgment on an old warrant of attorney, an affidavit that the deponent has seen the defendant alive within three months, and that he is now residing at Paris, is insufficient, unless it also state that his residence there is unknown. *Tripp v. Stanley*, 5 D. & L. 262.

3. A deed or other writing must be taken to speak from the time of its execution, and not from the date apparent on the face of it.

Therefore, where a warrant of attorney, under seal, bore date the 24th of February, 1847, but was not executed till the 20th of March, or delivered over to the plaintiff until the 29th of March, and the defeasance was for the payment of the principal sum "on the 20th of March next," and the plaintiff issued execution on the 30th of March, it was held that the execution was premature and must be set aside. *Browne v. Burton*, 5 D. & L. 289.

Cases cited in the judgment: *Clayton's case*, 5 Rep. 1; *Steele v. Marc*, 4 B. & C. 272.

4. Upon motion to set aside a warrant of attorney, the Court will not determine, upon affidavit, the question of whether or not it has been given by way of fraudulent preference. *Browne v. Burton*, 5 D. & L. 289.

5. An execution for more than the sum really due, but not for more than the sum authorized by a warrant of attorney, will only be set aside *pro tanto* for the excess. *Browne v. Burton*, 5 D. & L. 289.

6. On motion to enter up judgment on an old warrant of attorney, it appeared that the warrant of attorney, which was joint, was given to *A. B.* and *C. D.*, "public officers of the Yorkshire Banking Company," but not to them as public officers. The defeasance showed that the object of the warrant of attorney was to secure to the plaintiffs, as public officers, money therein specified to have been lent by them as public officers to defendants, and such further sum as the banking company might advance. The affidavits showed the original debt to be unpaid, and a further sum to have been advanced by the banking company, but did not allege the debt to be still owing to the plaintiffs, one of them having ceased to be a public officer. The Court permitted the banking company to enter up judgment in the names of *A. B.* and *C. D.* as individuals.

The affidavit stated the defendants to be alive, having seen and conversed with two of them, and "been in company with" the third on a recent day: *Held*, sufficient. *Howard v. Batho*, 5 D. & L. 396.

7. A warrant of attorney was attested in the following form:—"Signed," &c., "by the said *J. K.*, in the presence of *W. K. T.*, one

of the attorneys of her Majesty's Court of Queen's Bench at Westminster, and attorney on behalf of the said J. K., expressly named by him, and attending at his request to inform him, and I did inform him, of the nature and effect of the above-written warrant of attorney before the same was executed by him, and I declare myself to be the attorney for the same J. K.,—*W. K. T.:*" *Held*, sufficient. *Holt v. Kershaw*, 5 D. & L. 419.

Case cited: *Lewis v. Lord Kensington*, 3 D. & L. 637; 2 C. B. 463.

8. *Semble*, that the Court will not set aside a warrant of attorney upon motion, even if a total want of consideration appears. *Gay v. Hall*, 5 D. & L. 422.

9. Where goods were vested in trustees for the benefit of infants, but the trustees declined to act, and the grandmother of the infants, with whom they were living, took away part of the goods, but permitted the rest to remain in the possession of the step father, on his giving a warrant of attorney; the Court refused to set aside the warrant of attorney, on the ground of want of consideration. *Gay v. Hall*, 5 D. & L. 422.

10. The attestation to a warrant of attorney was as follows:—"Signed, sealed, and delivered by the said H. H. in my presence, and I declare myself to be the attorney for the said H. H., and that I subscribe as such attorney. G. O., solicitor:" *Held*, sufficient. *Gay v. Hall*, 5 D. & L. 422.

WRIT OF INQUIRY.

A writ of inquiry, in a personal action, may be tested in Vacation, under the 2 W. 4, c. 39, ss. 11 & 12. *Collett v. Curking*, 5 D. & L. 605.

WRIT OF SUMMONS.

Amendment.—In an action against two executors, the Court refused, after plea, to amend the writ of summons by adding the name of another executor, although the Statute of Limitations had run since the commencement of the suit. *Quere*, if the amendment would have been allowed before declaration or plea.

In order to save the Statute of Limitations, the Court will amend writs of summons in all cases where an amendment could have been made under the old process. *Goodchild v. Leadham*, 1 Exch. R. 706.

Cases cited in the judgment: *Brown v. Fullerton*, 13 M. & W. 556; *Christie v. Bell*, 16 M. & W. 669.

EVIDENCE.

ADMISSIONS.

Facts not being traversed.—*Knowledge by agent of principal*.—In assumpsit to recover from an insurance company the amount secured by a policy in favour of W. on his own life, defendant (the secretary) pleaded bankruptcy of W. *Replication*: That, before the bankruptcy and the making of the policy, one D., in whose right the present action was

brought, agreed with W. to lend him 1,000*l.* which should be secured by policy of insurance on W.'s life; that R. L., an attorney, acted in the said business of the said agreement as attorney for the lender; and that, in pursuance of the agreement, R. L., then being also an agent for the company, duly authorized in that behalf, in and about effecting life insurances with them, and otherwise, caused the policy to be effected on W.'s life for the purpose and on the terms aforesaid, and took possession of the policy, on behalf of D., the lender, in pursuance of the agreement, and for the purpose and on the terms aforesaid, and that the policy was never in the hands of W. or his assignees; that D. thereupon lent W. the 1,000*l.*, and W., in pursuance of the agreement, assigned the policy by indenture to D.; that the debt, exceeding the amount secured by the policy, was, at the time of the bankruptcy, and is, unpaid; and that, before the bankruptcy, D., the lender, for the purpose of keeping up the policy, paid to the company, and they received from him, divers sums for premiums in and about keeping the policy on foot and preserving to D. the benefit of it; which said premises respectively the company, before and at the time of the bankruptcy, well knew.

Rejoinder, that W., when he became bankrupt, had the chose in action in his possession, &c., by consent of D., the true owner, and was then reputed owner thereof. This allegation was traversed, and issue joined on the traverse.

On the trial, it appeared that the policy and assignment were effected at Tiverton, where R. L. was at that time transacting insurance business for the company as their agent, receiving and transmitting to them (their office being at Exeter) instructions for policies and money for premiums, settling losses, and receiving agency fees. No actual notice of the assignment was ever given to the company; but the plaintiff's counsel relied upon the facts stated in the replication, and not traversed, as proving, by admission on the defendant's part, that R. L., as the company's agent, had effected the policy and knew of the assignment; and they contended that such knowledge by him was, in effect, notice to the office. The judge allowed the facts to be so put to the jury, and did not permit a reply. Verdict for plaintiff.

Held, on motion for a new trial, that some of the facts stated in the replication were not traversable, and, therefore, assuming that the others might properly have gone to the jury a admitted, a new trial must be granted.

Quere, whether, if all the substantial facts relied upon by the plaintiff had been proved, the attorney's knowledge was a knowledge by the company equivalent to notice?

A new trial having been granted on the above objection, (and for an inaccurate expression in the judge's charge to the jury,) it was moved on the second trial that the company had authorized R. L. to receive notices on their behalf, and had agreed that a notice to

him should be as valid as a notice to them at their office. *Held*, that, under these circumstances, knowledge by *R. L.*, as above stated, was equivalent to notice served on the company.

Although *R. L.* acquired such knowledge, not in the form of a communication to the company, but as attorney for the assignor and assignee. *Gale v. Lewis*, 9 Q. B. 730.

AGREEMENT.

Materiality of time.—Stamp.—In assumption on a promissory note made by defendant and payable to plaintiff, defendant, as to all but 3*l.* 5*s.* pleaded that, to wit, on 30th March, *C.* being then tenant to *M.* of a farm, and having arranged to transfer it to defendants, and being, jointly with plaintiff, entitled to the farming stock and growing crops, it was agreed, by plaintiff and *C.* of one part, and defendant of the other, that, in consideration, &c., *C.* and plaintiff had sold, and thereby ratified, to defendants the possession of the farm, possession to be given on execution of the agreement; and, for the considerations aforesaid, and of such sum as should be found by valuers, after named, to be the value of the way-going crop of corn, having been secured to be paid by defendants to *C.* and plaintiff on 1st September next, after deducting the rent which would become due to *M.* in April, *C.* and plaintiff thereby sold to defendants the way-going crop and tenant right; and the parties nominated valuers, *T.* and *K.*; and it was agreed that the April rent should be deducted from the valuation, and the remainder secured to be paid to *C.* and plaintiff on 1st September next. Averment, that, to wit, on 1st April, the parties further agreed that the valuation should be made immediately and the amount secured by a promissory note, but the valuation should be revised by the valuers, to wit on 1st August then next, and, if any alteration should be made, the parties should pay and receive the amount so to be ascertained. Averment that the valuers, to wit, on 1st April, valued at 94*l.* 10*s.*, and the promissory note was given, payable 1st September, for the difference between that sum and the rent, and there was no other consideration for it. That afterwards, to wit, 2nd August, the valuers revised the valuation and reduced it to 86*l.* 15*s.*, whereby the difference between the rent and the valuation was reduced to 3*l.* 5*s.*, and the consideration for the note failed as to the residue. Replication, *de injuriâ*.

On the trial, it appeared that the words of the agreement of 1st April were,—“that such valuation shall be revised and examined by the said valuers above-named on the 1st day of August next.” The crops were in fact viewed on 2nd August only. The value was finally fixed on 12th August; but it was proved that the value had not altered between 1st and 2nd August.

Held, that the revision was not made in pursuance of the agreement, and that the plaintiff was entitled to a verdict on the issue.

To prove that plaintiff had assented to the revision on 2nd August, defendant offered in evidence an unstamped memorandum, signed by plaintiff on 20th August, when defendant's attorney, with whom the note had been deposited, gave it up to plaintiff. The memorandum stated the amount of the first valuation, the balance, after deducting the rent, and that this was secured by the note; and added,—“this note is to be subject to the revised valuation of Messrs. *T.* and *K.*, and will be more or less than 41*l.* 8*s.* 8*d.* accordingly as they value the corn. N. B. The note was given up to me by *W.* this 20th August.”

Held, that this did not require a stamp, and ought to have been received as evidence. *Marshall v. Powell*, 9 Q. B. 779.

ATTESTATION OF WILL.

Marksman.—Witness of infirm recollection.—A will, dated before statute 7 Will. 4, and 1 Vict. c. 26, was produced on a trial in ejectment. It was signed with the name of the alleged deviser; but there was no proof that the signature was in his hand-writing, or made by his authority. It was attested by two witnesses, deceased, whose hand-writing was proved; and between their names was that of another witness, *J. P.*, who appeared to sign by his mark. A man in extreme old age, named *J. P.*, was called, who was supposed to be the witness: but he had no memory on the subject. The will had not been disputed for 16 years after the death of the deviser.

Held, that upon this evidence, a jury might infer a due execution of the will under statute 29 Car. 2, c. 3, s. 5. *Doe d. Davies v. Davies*, 9 Q. B. 648.

Cases cited in the judgment: *Croft v. Pawlet*, 8 Str. 1109; *Haads v. James*, 2 Com. Rep. 531.

ATTESTING WITNESS.

Proof of Hand-writing.—To dispense with calling the attesting witness to an indenture of submission, (who was the son of the defendant), the plaintiff proved that repeated attempts had been made to find him, in order to serve him with a subpoena, by calling at his father's house and at several other places where he had resided, and also at an hospital at which he was, as a student, in the habit of attending lectures; and that, these attempts failing, a summons had been taken out, calling on the defendant to admit the execution of the indenture, on which the judge indorsed, “No order; the defendant refusing to give any information.” *Held*, that enough had been done to justify the reception of the indenture, upon proof of the hand-writing of the subscribing witness. *Spooner v. Payne*, 4 C. B. 328.

Case cited in the judgment: *Burt v. Walker*, 2 B. & Ald. 697.

CONSPIRACY.

1. *Stamp.*—In the course of proving a conspiracy to defraud, carried into effect by prevailing upon the prosecutor to accept bills, a warrant of attorney, given to him for the purpose of inducing him to accept, reciting the

acceptance, may be given in evidence, though unstamped. *Regina v. Gompertz*, 9 Q. B. 824.

2. An indictment for conspiring to defraud the prosecutor, may be supported by proof of a conspiracy to obtain his acceptance, though the prosecutor part with no money, and though he never has intended to take up his acceptances, and though the bills were never in his hands except for the purpose of his accepting. *Regina v. Gompertz*, 9 Q. B. 824.

COVENANT.

See *Under-lease*.

CUSTODY OF DOCUMENT.

On trial of an issue, a bond to indemnify parish officers against the charge of a bastard was offered in evidence. It was dated in 1716, and was brought from a chest kept in the workhouse of a union, comprehending the parish, in which chest were kept muniments belonging to the union. There was no direct evidence how it was placed in the chest; but it was proved that, in 1842, several documents were brought in a cart to the workhouse by a pauper, and placed in the chest.

Held, that enough appeared to satisfy the rule of proving deeds to be brought from a proper depository; and that the evidence was admissible. *Slater v. Hodgson*, 9 Q. B. 727.

DEPOSITION OF PARTY IN CUSTODY.

Under 59 Geo. 3, c. 12, s. 28.—To make the examination of a person in custody admissible under statute 59 Geo. 3, c. 12, s. 28, on a question of settlement, it must be proved expressly that the party was in custody, as required by the statute, at the very time when such examination was tendered in evidence. *Regina v. Inhabitants of Widecombe in the Moor*, 9 Q. B. 894.

DOCUMENT.

See *Custody of Document*.

EJECTMENT.

Twenty years' occupation.—Tenancy at will—by sufferance.—R. C., the purchaser of land, was let into possession before execution of a conveyance. He let in his son as tenant at will. The son occupied, and built a cottage on the land. Afterwards B. C. took a conveyance from the vendor; and, some time after, he mortgaged the land. The son continued to occupy the premises in all respects as at first, till his death, which happened within 21 years of his entry. The son's widow continued to occupy till the expiration of 21 years from her husband's entry: Held, that an action of ejectment afterwards brought against her was barred by statute 3 & 4 Wm. 4, c. 27, ss. 2, 7. For that the tenancy at will was not determined by the father's taking a conveyance: And that, if it had, in point of law, been so determined by that event; or by the mortgage, a tenancy by sufferance must be deemed to have commenced from such determination, there being no evidence of a new tenancy at will; and the tenancy altogether had continued more than 20

years from the end of the first year. *Doe d. Goody v. Carter*, 9 Q. B. 863.

Cases cited in the judgment: *Doe d. Bennett v. Turner*, 7 M. & W. 226; *Turner v. Doe d. Bennett*, 9 M. & W. 643.

HAND-WRITING.

See *Attesting Witness*.

MARKSMAN.

See *Attestation of Will*.

ORDER OF REMOVAL.

1. *Evidence as to grounds of quashing.*—The sessions, on appeal, quashed an order of removal, "not upon the merits," and "without prejudice to the making of any other order" to remove the same pauper. On appeal against a subsequent order,

Held, that the appellants were not at liberty to show, by parol evidence, that the 1st order of sessions was made on such grounds as, though the sessions deemed them merely technical, did legally conclude the question of settlement. *Regina v. Inhabitants of St. Anne's Westminster*, 9 Q. B. 878.

Cases cited in the judgments: *Rex v. Wick* 64 Lawrence, 5 B. & Ad. 326; *Ex parte Overman* of Ackworth, 3 Q. B. 397, n.

2. *Grounds for quashing former order.*—*Maintenance of lunatic pauper.*—An order of justices under statute 9 Geo. 4, c. 40, adjudicating on the settlement of a pauper-lunatic, and directing the officers of parish A. to pay for his maintenance in a house for reception of lunatics, was quashed on appeal, subject to a case. The case submitted, as questions for this Court, whether a former order of sessions, quashing a former order of justices touching the settlement and maintenance of the same lunatic pauper, on appeal by parish A. was or was not conclusive; and whether the present order of justices was valid or not, inasmuch as it directed payment, not to the county treasurer, but to other parties. This Court, on argument of the special case, gave judgment against the present order of justices; and it was quashed. A third order, adjudging the settlement to be in A., and directing payment by A. for the maintenance of the same pauper, was appealed against and quashed, subject to a case. The case stated the former judgment of this Court, and the reasons given by the Court, from which it appeared that the then order of justices was quashed on the last point only.

Held; that the quashing of the last-mentioned order by judgment of this Court might be explained by evidence of the reasons; and that the opinion delivered by the Court, as stated in the present case, was evidence that such order was not quashed on the ground that the settlement was not proved; for which reason, the quashing was not conclusive. *Regina v. The Inhabitants of St. Peter's, Drogheda*, 9 Q. B. 888, n. See also *Regina v. The Inhabitants of St. Peter's, Drogheda*, 9 Q. B. 888, n.

3. *Grounds of appeal.*—On appeal against an order of removal, the appellants offered evi-

dence of a former judgment of Quarter Sessions, quashing an order of removal founded on the same alleged settlement. The order of sessions, as entered on their minutes, stated that the order of removal was quashed "on the ground that the examinations were insufficient to support the same." Held, that this entry was general enough to let in evidence on the part of the respondents, that the adjudication proceeded on matter of form, not merits. *Regina v. The Inhabitants of Widcombe in the Moor*, 9 Q. B. 894.

4. The wife and children of R. B. were removed on examinations showing settlement of R. B., by hiring and service under C., and by birth. The appellants stated as distinct grounds of appeal: That the parents of R. B. were removed to, and acknowledged as settled inhabitants by, a third parish, and that he had acquired no settlement in his own right: That R. B. did not become settled in the appellant parish by hiring and service under C., and, That the paupers were not settled in the appellant parish in any manner whatever. Held, that the appellants could not give evidence that R. B. was not born in the appellant parish. *Regina v. Inhabitants of Widcombe in the Moor*, 9 Q. B. 894.

OWNERSHIP.

See *Presumption of Ownership*.

PARTNERS.

Dissolution.—The defendant, who had dealings with A. and B., as partners, afterwards made a contract with A. in B.'s presence, and received letters with reference to such contract bearing the signature of the firm. In an action by B., A., who was called as a witness, stated that he ceased to be a partner prior to the date of the contract, and that he made it as agent for B.: Held, that the jury were warranted in finding that the contract was with B. alone, although there was no precise evidence of the dissolution of the partnership between A. and B. *Cox v. Hubbard*, 4 C. B. 317.

PRESUMPTION OF OWNERSHIP.

1. The presumption of law, that slips of waste land adjoining a highway belong to the owner of the adjoining inclosed land, may be rebutted by evidence tending to raise a contrary presumption. *Doe d. Harrison v. Hampson*, 4 C. B. 267.

2. **Waste land.**—In an action by a rector, to recover a slip of land lying between the glebe and a highway, in order to rebut the presumption of ownership arising from contiguity, it was proved that the defendant, and those under whom he claimed, had occupied the spot in question for more than 40 years, and during four or five successive incumbencies, without interruption; and that there were slips of land adjoining the piece in dispute, at either end, also lying between the glebe and the road, which were occupied adversely to the rector: Held, that the whole case on both sides resting on presumption, it was properly left to the jury to say whether or not the evidence given

on the defendant's part rebutted the presumption of law on which the plaintiff's case rested. *Doe d. Harrison v. Hampson*, 4 C. B. 267.

PRINCIPAL AND AGENT.

See *Admissions*.

STAMP.

See *Agreement; Conspiracy*, 1.

UNDERLEASE.

Covenants to repair and insure.—A. being lessee of a messuage under the corporation of London, demised it, in 1829, to B., C., and D., for 21 years; the lessees covenanting to repair and to insure "in the sum of 2,500*l.* at the least, in the Protector Fire Insurance Office, or in such other respectable insurance office in London or Westminster as B., C., and D., (the lessees,) their executors, &c. should think fit;" with a proviso for re-entry for breach of any of the covenants.

In 1835, C., by indenture, granted an underlease to E. and F. for the residue of the term, wanting one day; the underlease containing the like covenants to repair, and to insure "in the sum of 2,500*l.* at the least in the Protector Fire Insurance Office, or in such other respectable fire insurance office in London or Westminster as B. and F., their executors, &c. should think fit," and also a proviso for re-entry for breach of any of the covenants.

The messuage being out of repair, and uninsured, the executors of A., in 1843, brought ejection, and recovered possession: Held, that C. was not entitled to recover against E. and F., the value of his reversionary interest,—the loss thereof not being the result of their breaches of covenant, but of the breaches of covenants by C., to which covenants they were no parties.

Held also, that the execution by the defendants of the indenture of underlease, and payment of rent thereunder to C., was sufficient evidence for the jury that C. was solely entitled to the reversion expectant upon the determination of the underlease. *Logan v. Hall*, 4 C. B. 598.

Cases cited in the judgment: *Penley v. Watts*, 7 M. & W. 601; *Walker v. Hatton*, 10 M. & W. 249.

VARIANCE.

The improper reception of evidence when the fact is fully proved *abundē*, is no ground for a new trial. *Stindt v. Roberts*, 5 D. & L. 460.

WILL.

See *Attestation of Will*.

WITNESSES.

Supplemental commission.—**Cross-examination of witnesses.**—A commission having been granted by the Court of Chancery, for the examination upon interrogatories of a witness for the defendants in an issue,—this Court refused to vary the terms of that commission, by empowering the plaintiff to cross-examine the witness under it, *vind voce*, or to issue another commission for that purpose. *Hargrave v. Hargrave*, 4 C. B. 648.

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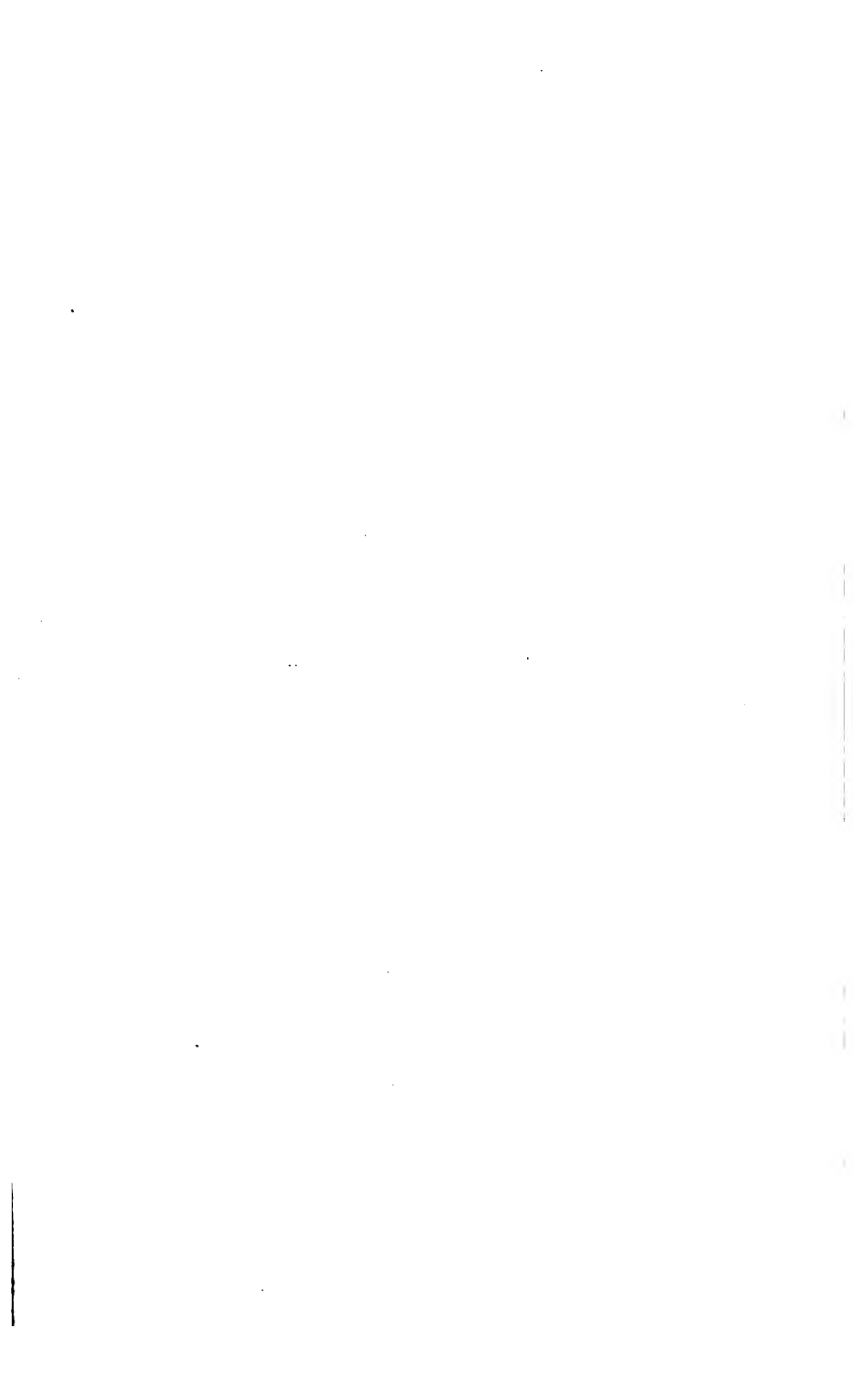
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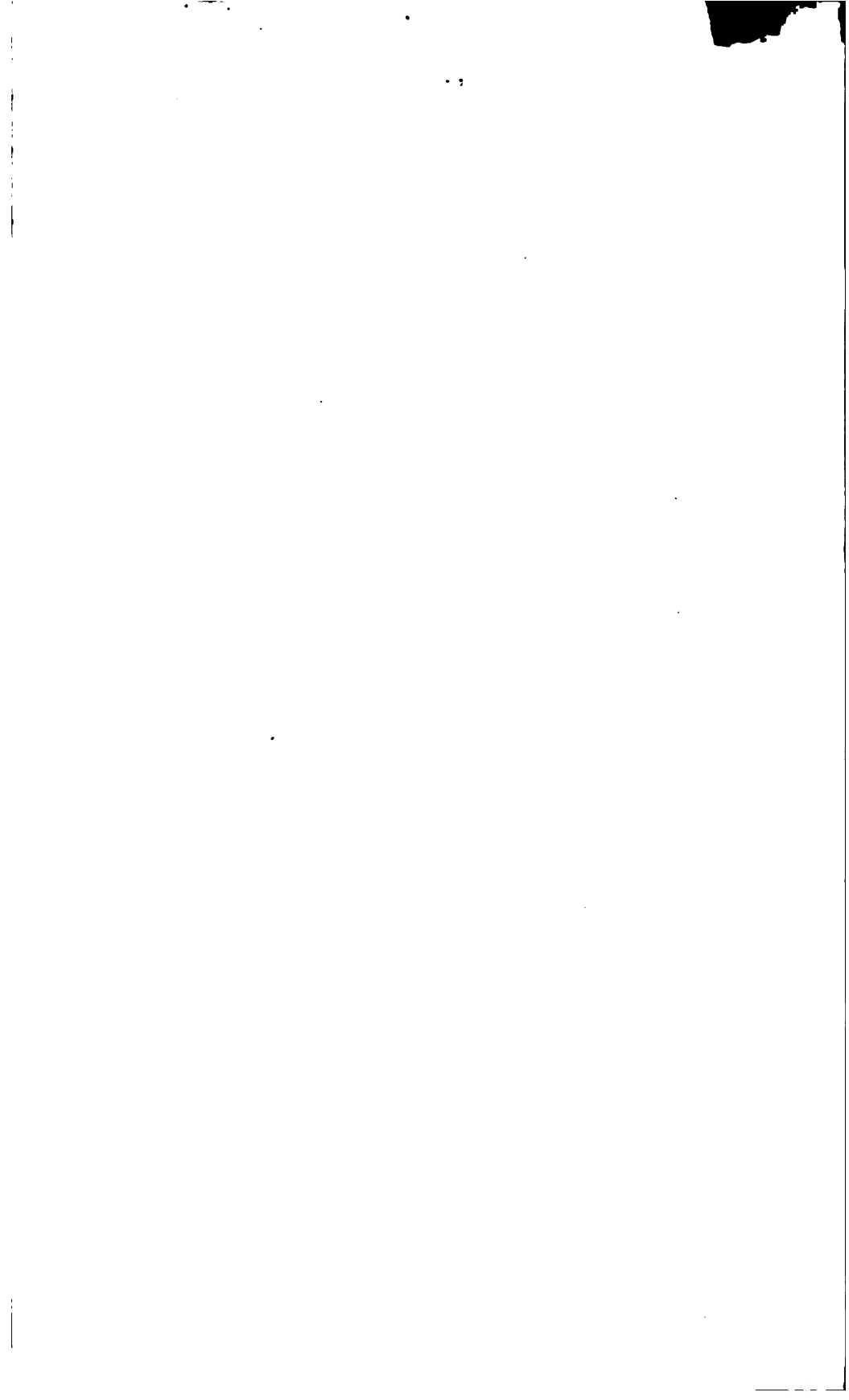
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